

30 JANUARY 1947

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1 Thursday, 30 January 1947
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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.
11 - - -

12 Appearances:

13 For the Tribunal, same as before with the
14 exception of: HONORABLE JUSTICE NORTHCROFT, Member
15 from New Zealand, not sitting.

16 For the Prosecution Section, same as before.
17 For the Defense Section, same as before.
18 - - -

19 The Accused:

20 All present except OKAWA, Shumei, who is
21 represented by his counsel.
22 - - -

23 (English to Japanese and Japanese
24 to English interpretation was made by the
25 Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Williams.

4 MR. E. WILLIAMS: Mr. President, Members of
5 the Tribunal.

6 The machinations, the threats, the pressure,
7 the military action, all under cover of misleading
8 and false explanations, by which Japan forced large
9 armies first into northern and later into southern
10 Indo-China were but steps in the plans to acquire
11 the complete control of that rich territory. (Ex.
12 612-665. R. 6731-7194).

13 The attempts to force concessions, the
14 subservice activities, the spreading of propaganda,
15 the military invasion of the Netherlands East Indies,
16 the forcing of Japan's political structure, of Jap-
17 anese education, of Japanese propaganda, and the
18 cultivation of Japanese inspired political movements
19 within that country were but part and parcel of the
20 objective to become its masters. (Ex. 1284-1354.
21 R. 11669-12342).

22 In the course of the overall conspiracy
23 which I have been discussing which is pleaded in
24 Count 1 of the Indictment, the lesser conspiracies
25 alleged in Counts 2, 3, 4 and 5 were involved. They

1 were but part and parcel of the overall plan. The
2 preparations for war alleged in Counts 6 to 17 in-
3 clusive, the initiation of the wars alleged in
4 Counts 18 to 26 inclusive, the waging of the wars
5 set forth in Counts 27 to 36 inclusive were all
6 crimes committed within the scope and course of the
7 overall conspiracy pleaded in Count 1 and con-
8 cerning which I have been addressing the Tribunal.

9 The charges of murder set forth in Counts
10 37 to 52 inclusive, were perpetrated in the course
11 and as a part of the carrying out of the conspiracy.
12 Each of these murders and countless tens of thousands
13 not pleaded were but the ordinary, customary, ex-
14 pected and foreseen results of the wars of aggression
15 contemplated by the conspirators.

16 The conventional war crimes and crimes
17 against humanity set forth in Counts 53 to 55 in-
18 clusive were but the obvious, necessary and in-
19 tended results of the kind of warfare planned and
20 intended by these conspirators.

21 No one of the accused can disassociate him-
22 self from his participation in the overall criminal
23 conspiracy alleged and proved. No reasonable con-
24 tention that any of the specific crimes charged
25 was not within the scope, purpose or intent of that

1 conspiracy can be made. It follows that each of the
2 defendants is criminally liable for each act com-
3 mitted during the course of the criminal conspiracy.

4 It is no defense that the position of any
5 accused was "subordinate," or that he but obeyed
6 orders - neither under common law, nor the Charter,
7 is such claim a defense, and who can say in a con-
8 spiracy of this magnitude, what role was "subordi-
9 nate"?

10 As we come now to a consideration of the
11 evidence showing the connection of the several
12 defendants with the over-all conspiracy and their
13 individual guilt, it is well to bear in mind that
14 the object of the plan or conspiracy upon which these
15 defendants and others entered, was that Japan should
16 secure and hold the military, naval, political and
17 economic domination of all East Asia and the Pacific
18 and Indian Oceans and all countries bordering thereon
19 and islands therein, and at the same time drive the
20 "whites" out; that this object should be effected
21 by means of declared or undeclared wars of aggression
22 and in violation of International law, treaties,
23 agreements and assurances, against any country or
24 countries, including the countries sought to be
25 seized, which might oppose that purpose.

The conspiracy envisaged and required the preparation of the people of Japan by means of propaganda and censorship to accept and join in the program intended. It involved the economic and political renovation, coordination and integration of Japan itself. It involved the keying of the Japanese economical and financial system to the expanded requirements of aggressive war, and the integration of that system with those of conquered territories. It involved vast preparation by acquisition, manufacture and storing of arms, munitions and military and naval equipment. It involved the training of soldiers and sailors in vast numbers, and the mobilization for agriculture and industry of the man and woman power of Japan. It involved the organization and use of the communication and transportation system of Japan and all conquered territories. It involved the organization and use of the man power of conquered territories for the benefit of Japanese military and civilian industrial and economic requirements. It involved the over-all integration of all of the people, the territory, the men and material of Japan and her conquered territories for the single purpose of further military aggression and domination, while at the same time it

1 required that in her International relations Japan
2 should on the one hand conceal her true purpose and
3 her war-like preparations and on the other hand seek
4 by means of diplomacy to lull the other nations of
5 the world into a sense of security and at the same
6 time to obtain from them any and all concessions
7 which would enable Japan to proceed with her grand
8 objective.

9 To accomplish this purpose there were re-
10 quired not only military men such as ARAKI, MINAMI,
11 TOJO, and others, but naval officers such as NAGANO,
12 SHIMADA and OKA, and propagandists such as OKAWA,
13 HASHIMOTO, ARAKI and SHIRATORI; politicians such as
14 KIDO and MATSUOKA; industrial and economic experts
15 such as KAYA; diplomats such as HIROTA, TOGO, SHIGEMITSU,
16 OSHIMA; makers of puppets, such as DOHIHARA and
17 ITAGAKI; and countless others.

18 The efforts of all these men in their many
19 and varied fields were required in order that their
20 grand objective might be attained, and while the
21 roles of some were more spectacular and dramatic
22 than those of others, each in his place and at the
23 times required performed his part and contributed
24 effectively to the development of the plans, strategy
25 and the action of the conspiracy.

1 My brother, Mr. A. S. Comyns-Carr, Associate
2 Prosecutor from the United Kingdom, will soon present
3 to the Tribunal an analysis of the evidence showing
4 the connection of each of the individual accused with
5 the conspiracies here alleged and their criminal
6 responsibility for each of the specific crimes charged

7 Under the Charter, it would seem not timely,
8 or even proper, at this stage of the trial for the
9 prosecution formally to sum up, or fully to analyze
10 the evidence. (Charter: IV, 15). We have, there-
11 fore, made no effort to present our full views in
12 respect of all of the evidence so far offered. This
13 presentation and that to follow are intended simply
14 and only to show:

15 (1) That there is sufficient evidence, if
16 uncontradicted or unexplained, to prove the existence
17 of the conspiracies and the commission of the sub-
18 stantive crimes alleged in the Indictment;

19 (2) That each of the accused was a res-
20 ponsible member of the conspiracy and as such crimi-
21 nally answerable as a conspirator and also for the
22 substantive crimes committed, whether in the course
23 of the conspiracies or otherwise.

24 If more than this is required we submit
25 that under the express provisions of the Charter the

1 time to do so is after all evidence from the defense,
2 as well as the prosecution, has been heard.

3 At any rate, it should be borne in mind
4 that in considering a motion to dismiss at the end
5 of the prosecution case, it is the duty of the Court
6 to take as true all evidence and to draw all in-
7 ferences therefrom favorable to the prosecution; and
8 at the same time to disregard all conflicts, whether
9 of evidence or inference.

10 The arguments made by the defense have
11 obviously disregarded this fundamental rule.
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THE PRESIDENT: There is a statement
1 made by Mr. Williams at the end of his reply
2 which, to say the least, is arguable. That is
3 all I propose to say about it. I do not let it
4 pass without comment.

5 Mr. Comyns Carr.
6

7 MR. COMYNS CARR: May it please the
8 Tribunal, we have been in some difficulty in
9 preparing our answer to these motions partly
10 because of the short notice we have had with re-
11 gard to almost all of them, and partly because
12 we have not known in how much detail the Tribunal
13 would desire us to answer them. In the ordinary
14 way we should neither be required nor allowed to
15 sum up our case at this stage.

16 We propose, however, for the convenience
17 of the Tribunal and subject to its approval, to
18 handle the matter in the following way.

19 First, we propose to hand in and circu-
20 late to the defense for the convenience of all
21 concerned a chronological summary of the whole
22 of our evidence so far as it is reasonably capable
23 of being dealt with in that way, down to the close
24 of the Netherlands phase of the case on December 10,
25 1946. This is a somewhat formidable document, the

main part of which consists of 314 pages, the preparation of which has involved considerable labor. Great care has been taken to avoid errors and omissions, but some may unavoidably have occurred. Bulky as it is, every item is necessarily much condensed, but we have given the reference to the page of the record and the exhibit number for every statement so that the reader can check and amplify it at will. At the end there are two appendices; A gives a general indication of matters omitted because of their character not lending themselves to chronological treatment. This is, of course, particularly true of much of the oral testimony. We have also deliberately reserved the Class B and C offenses for separate treatment. At the end of Appendix A is a list of the exhibits which are extracts from "Foreign Relations" dealing with the negotiations from April to December 1941 leading up to the Pacific War. Appendix B deals separately with each accused, giving the pages of the main summary on which he is actually named, a list of his offices, etc., with dates and reference to the pages of the main summary covering those periods; the exhibit numbers of extracts from his interrogation; and

1 of speeches or writings by him (other than
2 correspondence), if any; and the dates on which
3 he received decorations for specific services form-
4 ing part of the case.

5 We have not had time to include anywhere
6 the evidence introduced since the close of the
7 atrocities phase. I am incorporating a good
8 deal of it in the following remarks, as well as
9 correcting one or two errors which have been
10 discovered in the summary.

11 In asking you to accept this document
12 we are following the practice prevailing in some
13 courts, particularly in America, of handling in
14 written briefs, but we would urge you to remember
15 what it does, and what it does not, purport to
16 include. May it be handed around?

17 THE PRESIDENT: Mr. Carr, we have called
18 upon the prosecution to reply to the defense. We
19 expect a reply and nothing else. It may be the
20 material which you are going to place before us
21 is a reply. We do not know. We have not seen it.
22 So far we have no objections to take. You may
23 hand it around unless the defense objects.

24 Mr. Logan.

25 MR. LOGAN: If the Tribunal please, we

1 have not seen the document in question. I asked
2 Mr. Carr for a copy of it, and he refused to give
3 it to us.

4 THE PRESIDENT: There is no obligation
5 upon him to do so. It does not come within the
6 rules. But I am sure the Tribunal would like for
7 you to have a copy or copies. It is very difficult
8 to follow these things as they are read unless you
9 have a copy; we find it so, at all events.

10 MR. LOGAN: That is right. Until we
11 have seen it, your Honor, may we reserve our
12 objections to it? It may be he is presenting it as
13 a part of his argument; I do not know.

14 THE PRESIDENT: If it is a reply we can
15 take no exception to it, and neither can you.

16 MR. LOGAN: That is right. It may be
17 of value to all of us if it is a true chronology;
18 I don't know; I haven't seen it.

19 THE PRESIDENT: I am sure the Tribunal
20 would like to have it, Mr. Carr, subject to the
21 defense' objections.

22 I am sure the Tribunal would like to have it,
23 subject to the defense' objections. I thought at the
24 time it was better to do so until this matter was
25 at least called to our attention, because it is really
a summary and abstract of the record and we have a
court record here, that is your opinion, I think.

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1 MR. COMYNS CARR: Would it be convenient,
2 your Honor, if we give them copies now to look at so
3 that they can decide whether they propose to take any
4 further objection?

5 THE PRESIDENT: It will take them some time
6 to make up their minds. I suggest you give them
7 copies now, Mr. Carr, and then proceed to read the
8 material.

9 MR. COMYNS CARR: If your Honor pleases.

10 Your Honor, may I say that we are handing
11 them copies now on the understanding that if they
12 object to the Tribunal having the document, the copies
13 will be returned?

14 THE PRESIDENT: We made no order for copies,
15 so you can make your own terms, Mr. Carr.

16 Captain Brooks.

17 MR. BROOKS: If the Tribunal please, in
18 accepting these we are not accepting them on those
19 terms as presented by the prosecutor. I think that
20 he has already delivered this morning copies to each
21 one on the bench of the court, and I thought at the
22 time it was improper to do so until this matter was
23 at least called to our attention, because it is really
24 a summary and excerpts of the record and we have a
25 court record here that is very concise, I think.

1 THE PRESIDENT: We saw them before us when we
2 took our seats. None of us read them. We put them
3 to one side.

4 MR. COMYNS CARR: I did not know that they
5 had actually been put on your desks. I thought they
6 were still in the custody of the Clerk of the Court.

7 THE PRESIDENT: No harm was intended, and
8 none was done.

9 MR. COMYNS CARR: Next I propose to address
10 you on these motions as a whole, covering generally
11 the position of each accused in relation to the Indict-
12 ment. If, when I have finished what I have prepared
13 for simultaneous translation, any member of the
14 Tribunal wishes me to deal with anything which I have
15 omitted, I shall be pleased to answer to the best of
16 my ability.

17 I will deal first of all with the Indictment
18 generally, beginning with Group One, Crimes against
19 Peace. These consist, first, of five conspiracy counts,
20 the first count general, the other four stressing
21 particular aspects of the conspiracy as it developed.
22 We have alleged that each of them began on 1 January
23 1928 and ended on 2 September 1945, in my submission
24 rightly, especially as to the latter date, because
25 although, for example, the Manchurian aggression

1 may be said to have been accomplished in 1934, or
2 even earlier so far as the four provinces themselves
3 were concerned, the domination of them lasted to
4 the end and they were used to the end to assist in
5 further aggressions. Good examples of this are to be
6 found in exhibits 1214 and 1219, where TOGO is giving
7 instructions on 4 and 7 December 1941 (and changing
8 them within a few days)--

9 THE PRESIDENT: Mr. Carr, we haven't copies
10 of what you are reading now.

11 MR. COMYNS CARR: I am very sorry, your
12 Honor, but until we received the defense motions
13 it was impossible to prepare answers to them, and it
14 has been a very severe task to achieve even as much as
15 we have done and there has just not been time to have
16 them stenciled so that copies would be available for
17 everybody.

18 THE PRESIDENT: Will you read slowly,
19 Mr. Carr, please?

20 MR. COMYNS CARR: If your Honor please.
21 I will begin that sentence again.

22 Good examples of this are to be found in
23 exhibits 1214 and 1219 where TOGO is giving instructions
24 on 4 and 7 December 1941 (and changing them within a
25 few days) as to the parts which Manchuria and occupied

1 China were to play in the Pacific War and the Chinese
2 and Russian evidence (extending right up to 1945) as
3 to the preparations going on there and the use of
4 Manchuria as a base for the further invasion of China
5 and the actual and contemplated invasion of the U.S.S.R.
6 It follows that the guilt of the Manchuria conspiracy
7 is not confined to those such as OKAWA, HASHIMOTO
8 and ITAGAKI, who are proved to have taken part in the
9 original plot, and MINAMI, ARAKI, LOHIIHARA and KOISO,
10 who were active in it at an early date, but extends
11 to all the other accused some of whom may not have
12 been active in it or even in favor of it at the
13 beginning, provided they are proved to have adopted
14 it later. Counts 6 to 17 inclusive allege against
15 all the accused the planning and preparation of
16 aggressive wars against a number of countries. Here
17 again the charges cover the whole period, in our
18 submission rightly. Planning and preparation do not
19 cease when actual war begins, nor are they, or the
20 conspiracy to wage them, any the less offences because
21 in a particular case the actual war may never have
22 occurred at all or may technically have been started
23 by the other party.

24 Basically, our proposition as explained by
25 my friend, Mr. Williams, is that from the moment when

1 a particular accused is proved to have joined the
2 conspiracy until the moment, if any, when he is proved
3 definitely to have severed his connection with it, "as
4 leader, organizer, instigator or accomplice," to quote
5 the Charter, he is guilty as a principal, not only of
6 the conspiracy, but also of all substantive offences
7 contemplated by the conspiracy, which may be "performed
8 by himself or any person in the execution of such
9 plan." In this and other respects the Charter only
10 emphasizes legal propositions familiar to most of us.
11 Therefore, it is not, in our submission, necessary to
12 prove direct participation by any individual in the
13 particular act or acts the subject of any count, pro-
14 vided they occurred after we prove that he joined the
15 conspiracy, and were within its scope, and he is not
16 shown to have repudiated the conspiracy at that date.
17 That being our view, I do not think it would be helpful
18 to deal with each accused count by count, which would
19 involve endless repetition.

20 With regard to Counts 18 to 26, Initiating
21 Aggressive Wars, we may perhaps have been unduly
22 meticulous in drawing the Indictment in not following
23 that principle to its logical conclusion. We have
24 not charged every accused in each of these counts
25 with "initiating" at specific times, unless we expected

to have evidence connecting him with the immediate
1 responsibility for those acts at the relevant dates.
2 However, if we have failed in that in any individual
3 case, but given you sufficient evidence to show that at
4 the date in question each named accused had joined the
5 general conspiracy, we submit that that is enough. We
6 have been perhaps too meticulous also in another respect,
7 namely, that in the cases where an actual declaration
8 of war came from another country before an attack by
9 Japan we have made no charge in this category, even
10 though, as in the case of the Netherlands, we have
11 submitted ample proof of Japan's aggressive intention
12 and have, therefore, made a charge of "waging aggressive
13 war." This does not apply to cases such as the
14 United States and the British Commonwealth; the dec-
15 laration of war came from them, but only because Japan
16 had made her attack first without any declaration.
17 Most of the above remarks apply to the "waging" class
18 of Counts 27 to 36.

I would like to say a few words about the
20 contention that because declarations contemporary with
21 the Kellogg-Briand Pact showed that it was not intended
22 to exclude self-defense, and left each nation free to
23 decide whether it was obliged to have recourse to war
24 in self-defence, therefore this Tribunal has no

1 jurisdiction to inquire into that decision. This has
2 been dealt with in the Nuernberg judgment at pages 28
3 to 30. I would concede that some latitude must be
4 allowed in this matter. If you find on the facts
5 when the evidence of the accused has been given, that
6 such a view was both genuinely held and reasonable, it
7 might afford a defense even if you did not agree with
8 it. But we have given evidence to show that it was
9 neither. It could only be entertained by giving to the
10 words "self-defense" a meaning which they obviously can-
11 not bear, namely, "the enforcement of the policy of
12 Japan in any part of the world." Such a meaning is
13 sought to be given to them in a number of Japanese
14 documents and statements by the accused which are in
15 evidence. Some of them will be mentioned when I deal
16 with the cases of those accused. But it can be found
17 very clearly in the amusing exhibit 1270-A, in which
18 a committee of Japanese lawyers working for the Foreign
19 Minister TOGO tried to manufacture an excuse for the
20 failure or deliberate omission to give warning before
21 the attacks on December 8, 1941. In so doing they
22 destroyed most of those which have been suggested and
23 fell back upon "self-defense." In truth there is not
24 the slightest pretext for this contention. We have
25 given evidence of planned aggression by Japan, acting

1 by these accused, at every stage. In the approach to
2 the Pacific War every act of each of the Allies during
3 1940 to 1941 was merely provoked by some new aggressive
4 move of Japan, obviously designed as a threat against
5 one or more of them. There is not the smallest evidence
6 of an intention by any of them to attack Japan, or
7 even to interfere by armed force with her aggression
8 in China, which they might have been well justified in
9 doing.

10 I do not propose to go through all the nego-
11 tiations leading up to the Pacific War. The position
12 at the beginning of them was that Japan had accomplished
13 her aggression in Manchuria and had achieved large
14 successes in, but had failed to complete, her aggression
15 in the rest of China. If you accept our contention
16 that this was actually an unjustified aggression, that
17 view must be the touchstone in considering the subsequent
18 negotiations. The members of the League of Nations,
19 and of the Brussels Conference, including the United
20 States and Britain, had so declared and refused to
21 recognize these conquests. There was the Tri-Partite
22 Pact and the advance to the south had begun. The
23 European War was in progress and France and the Nether
24 land overrun. Russia and the United States were not yet
25 involved.

1 Japan was in essence seeking, so far as her
2 negotiations were genuine at all, to do something which
3 was obviously impossible. She was like a burglar in
4 possession of his spoils, who wants to be received
5 back into respectable society not only without punish-
6 ment but with the retention of part of his ill-gotten
7 gains. The only point on which she was prepared to
8 compromise was how much of the gains, repeatedly
9 described as "the fruits of four and a half years of
10 sacrifice in China," she should be allowed to keep.
11 Any intelligent person must have known that on this
12 basis there was never any hope of success.

13 I think it is sufficient to examine the
14 question whether the United States note of November 26,
15 1941, exhibit 1245-I, provided any legitimate excuse,
16 as alleged by the accused concerned, for Japan to go
17 to war. In my submission there is none. On the
18 contrary, every proposal put forward is one which the
19 United States and those who later became its allies
20 had every right to demand, and Japan every moral and
21 contractual obligation to concede. But even if this
22 were not so, it does not contain the slightest hint
23 of a threat that if it is not accepted the United States
24 or any of the other countries concerned would attempt
25 to enforce it by war. It was only Japan, represented

1 by some of these accused, which regarded and used
2 the breakdown of the negotiations as a cause for war.
3

4 As an alternative to this policy
5 of force and total destruction force, the argument
6 is that the aim of aggressive war involves at least
7 having a cause to fight for, even though the methods
8 used in the fighting is illegal. But it can be
9 argued that the initial or primary aim has to be
10 legal. Every state has the right to defend itself
11 ready to repel sudden attacks from other states
12 and even in legitimate self-defence, the methods
13 should not be regarded as illegal in law.
14 However, this causes the problem of what
15 would be legal self-defence by violent entity.
16 In justifying the distinction between the
17 legal and illegal and the which are legitimate,
18 it is often said that a general, but not every violent
19 act is criminal. By defining the aggressive war
20 as the main cause to the individual who commits
21 the war, we have to establish that it is in itself more
22 serious a violation which we claim here, and the
23 International Tribunal has found there to have been
24 a violation of the law of war. The violation is viewed as committed
25 at another point when the armed conflict has started.

I now come to group two: Murder, the inevitable consequence of aggressive warfare, and the greatest of all "Crimes Against Peace." These counts in our submission reduce this matter to its simplest and most conclusive form. The argument that the crime of aggressive war involves ex post facto law is invalid for, among others, the reasons given in the Nuremberg Judgment. But when the charge is framed as murder it simply has no application. Every statesman or commander who is a party to ordering his army to attack and kill an enemy, even in legitimate warfare, fulfills all the conditions of murder if it was done without lawful justification. However, if it appears that this was done in lawful belligerency he is not guilty. Now we must recognize the distinction between that which is unlawful and that which is criminal. Every criminal act is unlawful, but not every unlawful act is criminal. In charging that aggressive war is a punishable crime in the individual who launches it, we have to establish that it is in itself such a crime, a burden which we claim here, and the Nuremberg Tribunal has found there to have been discharged. But when the matter is viewed as common law murder the point does not arise. The accused

1 who necessarily fulfills all the other elements of
2 murder, in that he has purposely ordered the kill-
3 ing of human beings, has to rely upon a lawful
4 justification. He says war is such a justification,
5 but if the war is unlawful his justification fails.
6 Now even if it were not established, as we claim
7 it is, that aggressive war, in breach of a treaty,
8 is itself a punishable crime, it is certainly not
9 lawful, and therefore cannot afford a justification
10 for what is otherwise plain murder. If this has
11 never been recognized before it is only because the
12 circumstances have never arisen before, and it is
13 high time it was recognized now. It has always
14 been implicit in the definition of murder in every
15 civilized country. It disposes finally of the last
16 vestige of plausibility in the ex post facto argument.
17 In group two we have alleged that various acts of
18 warfare were illegal, and the killings murder, for
19 one or two or all of three reasons.
20

21 First that the war was undeclared and in
22 the nature of a treacherous surprise. Second,
23 that it was in breach of the treaties against
24 aggressive war. Third, that the manner in which it
25 was conducted was contrary to the laws of war.

This brings me to group three in the

Indictment. Conventional war Crimes and Crimes against
1 Humanity. Our legal argument on this subject is
2 rather fully set out in Appendix D to the Indictment
3 itself. We have proved all the facts there
4 alleged. We claim to have shown that the govern-
5 ment of Japan was in effect bound by the Geneva
6 Conventions of 1929. But failing that we say they
7 were unquestionably bound by the Hague Conventions,
8 particularly numbers 4 and 10, of 1907, and that
9 all the Conventions are merely declaratory of
10 International Law. Every outrage we have alleged
11 comes in our submission within all of them.

These are the ways in which we claim to
13 have proved the responsibility of the accused for
14 these outrages.

16 1. Article 4 of the Hague Convention and
17 Article 2 of the Geneva Convention provide that
18 prisoners of war are in the power of the hostile
19 government and not of the individuals or corps
20 which capture them. No government or member of it
21 in face of this can evade responsibility by trying
22 to shift it on to a particular department such as
23 the War or Navy Ministry, or onto individual
24 commanders in the field, though the latter and the
25 officials of those Ministries may and do thereby

1 acquire a responsibility of their own. The main
2 responsibility remains with every individual member
3 of the government.

4 2. Every one of the accused must have been
5 aware of the horrible notoriety attached to the
6 Japanese army by the outrages at Nanking and else-
7 where in China, and of the danger that this might
8 recur.

9 3. We have proved a general similarity in
10 the character of the outrages prevalent over all
11 the theatres of war in which the Japanese army or
12 navy operated during the Pacific War, both with
13 one another and with what happened in China, which
14 establishes a universal plan or pattern, and indi-
15 cates that this was a recognized policy of terrorism.

16 4. We have proved a long series of protests
17 over the air and through the Protecting Powers
18 which must have brought to the attention of all the
19 accused the necessity of using their authority to
20 improve the conditions, a duty which lay upon them
21 in any case. In so far as these were addressed to
22 Foreign Ministers SHIGEMITSU and TOGO, we say that
23 they by no means discharged their responsibility
24 by merely passing the complaints on to the
25 Ministries directly concerned, and forwarding such

1 few, meagre and obviously unsatisfactory replies
2 they received, to the Protecting Powers. Their
3 duty was to bring the matter before the Cabinet,
4 which presumably they did, and if they could get
5 no satisfaction, to resign.

6 5. In a number of cases we have proved
7 direct personal responsibility of individual accused
8 for outrages in general or in particular, including
9 MATSUI, HATA, DOHIHARA, MUTO, ITAGAKI, KIMURA and
10 SATO, who held commands in areas concerned, and
11 TOJO, KIMURA, MUTO, SATO and SHIMADA, who held posts
12 immediately responsible at the centre. I should
13 have added there: and OKA. The idea that commanders
14 in the field were alone responsible is unfounded.
15 But they had a responsibility.

16 It is contended that by reason of the use
17 of the words mutatis mutandis the Japanese government
18 was only bound to apply the provisions of the 1929
19 POW Convention in so far as they were not inconsistent
20 with the provisions of Japanese internal laws and
21 in so far as the exigencies of the war situation
22 permitted or indeed at their discretion. The
23 answer to this contention, however, is that, in so
24 far as the Convention is binding or sets out inter-
25 national common law, the Japanese government could

1 not shelter itself behind any domestic legislation
2 which would be inconsistent with it.

3 It has never been denied that persons may
4 be criminally liable for violation of international
5 law.

6 In the YAMASHITA case, the responsibility
7 of a commanding officer was considered. The charge
8 was that the commanding officer "unlawfully disregarded
9 and failed to discharge his duty as commander to
10 control the operations of the members of his command,
11 permitting them to commit brutal atrocities against
12 people of the United States and its allies and he
13 thereby violated the laws of war." The Supreme Court
14 of the United States stated that in its opinion an
15 army commander had the duty "to take such appropriate
16 measures as are in his power to control the troops
17 under his command in the prevention of the specified
18 acts which are violations of the law of war and
19 which are likely to attend the occupation of hostile
20 territory by an uncontrolled soldiery." Responsi-
21 bility, according to this case, and, it is contended,
22 according to international law, is based upon the
23 "power to control."

24
25 The general proposition may, therefore,
 be stated that all persons who have the power to

control the acts of others who commit breaches of
the laws of war and who, knowing that such breaches
have been committed, take no steps to prevent their
repetition; or who, having reason to anticipate
violations of the laws of war by persons under
their control, fail to take proper measures to prevent
their occurrence; or who, having a duty to ensure
that their colleagues conform to the laws of war,
neglect to perform that duty, are themselves guilty
of offences against the laws of war.

In fixing the responsibility for violations
of the laws of war upon persons who, by reason of
their official position, have power to control the
acts of subordinates, and who may be remote from
the places where the atrocities are actually com-
mitted by the forces under their control, it may be
contended that it is necessary that such persons
should have knowledge that atrocities are likely
to be committed or have been committed before any
responsibility for their failure to prevent the
commission or the repetition thereof can be imposed
upon them. Once it is shown that a person has
the knowledge or ought to have the knowledge that
atrocities are likely to be committed or have been
committed by others under his control, it is

1 submitted, that a duty immediately arises to exercise
2 the power of control so as to prevent the commission
3 or repetition of such offenses. No person can rid
4 himself of responsibility if he deliberately fails to
5 make inquiries and by reason of such failure does
6 not acquire actual knowledge of atrocities. If this
7 were so, every member of a government could gain
8 immunity simply by neglecting to inform himself.
9

10 It is also contended that, when a state of
11 things is widespread and notorious, there is a prima
12 facie presumption of knowledge which calls for
13 rebuttal by the accused. In the absence of such
14 rebuttal, knowledge may be inferred.

15 As to knowledge that atrocities were likely
16 to be committed after 7th December 1941, it is an
17 important fact that the Japanese government was at
18 war with China from 1931 until 1945 and that during
19 that period many atrocities and other flagrant
20 breaches of the laws of war were committed by the
21 Japanese Forces against prisoners of war and
22 civilians, and that notifications and protests
23 concerning such atrocities were sent to the Japanese
24 government in Tokyo and the general facts, if not
25 the exact details, were notorious throughout the

1 world and particularly in Japan. Evidence of such
2 protests was given, for example, by Dr. Bates.

3 After 7th December 1941 many letters of
4 protest setting out details of breaches of the laws
5 of war were sent by the Swiss Minister on behalf of
6 Allied governments to the Japanese Foreign Minister.
7 In most cases there was no reply at all, while in
8 others, after repeated reminders, replies were
9 forthcoming only after great delay. In no case was
10 any satisfactory answer ever received. Many requests
11 to visit camps in Japan and elsewhere were made by
12 the Protecting Power but, with a few exceptions,
13 visits were always refused. When reasons were given
14 for refusal, they were, in most cases, fictitious.

15 Permission to visit camps in Thailand,
16 where the prisoners of war and native labourers were
17 held under the most appalling conditions, was
18 frequently requested, but consistently refused by
19 the Japanese government on grounds which are clearly
20 unreasonable. Exhibits 473 and 475, with Colonel
21 Wild's evidence, establish that the operation on
22 which these unfortunate men were forced to work was
23 of strategic importance, ordered by Imperial General
24 Headquarters, under the financial control of the
25 Japanese government. The welfare of these men was

1 deliberately sacrificed to so-called strategic
2 necessity, which in itself made their employment,
3 even under good conditions, unlawful.

4 In many cases, the conduct complained of by
5 the Allied powers was the direct result of deliberate
6 action by Japanese officials in passing laws and promul-
7 geting orders governing the discipline and punishment
8 of Allied prisoners of war in Japanese hands.

9 The United States and British governments on
10 many occasions reminded the defendants of their obli-
11 gations in matters concerning prisoners of war and
12 reference may be made to the occasions on which they
13 informed the Japanese government that it could not
14 escape responsibility for the consequences of its
15 disregard of the principles of international law.

16 With reference to the contention that the
17 Potsdam Declaration and instrument of surrender did
18 not refer to any war criminals other than those
19 guilty of what are called "Conventional War Crimes."
20 Not only is this unfounded as a matter of construction,
21 but we have now proved that it is not based on fact,
22 but that the then Japanese government fully understood
23 that it included those responsible for the war, by
24 the entry from KIDO's diary, exhibit 1283, of August
25 9, 1945.

Goldberg & Kapleau

1 MR. COMYNS-CARR: I will now deal with
2 some further points in the General Motion of the
3 defense. Most of them I do not think it necessary
4 to answer unless requested to do so by the Tribunal.
5 The legal points were mostly dealt with on the
6 motions directed against the Indictment itself,
7 and are in our submission out of place at this
8 stage. But I will add a few words on some of
9 them. Practically all of them are contrary to
10 the plain-terms of the Charter, but we prefer to
11 meet them on their merits.

I will take paragraphs one to six together.
12
13 We repudiate altogether the idea that International
14 Law is a matter to be proved by evidence. So far
15 as we rely upon particular treaties we have proved
16 them, or more correctly, placed them before you.
17 The only kind of law which requires evidence is
18 the law of a country foreign to that in which the
19 Tribunal has jurisdiction. This is an International
20 Tribunal. International Law is your law. As to an
international code and the right to establish an
International Tribunal to enforce it, Japan and most
of the countries here concerned recognized this at
21
22
23 Versailles.

25 The code is well defined in the Treaties

existing at that time or agreed upon since then and
in the common standards of humanity. This subject
was dealt with in the judgment of the Nuremberg
Trial, pages thirty-six to forty-two, and although
it is not binding upon you, and could, of course,
if you wish it be amplified, for the present I
adopt that passage. It also disposes of the con-
tentions in paragraphs seven to eight and ten. These
I submit are peculiarly absurd: "You cannot indict
a nation", it has been said, the reason being that
the acts are those of the individuals who held power
in that nation. Now the converse is suggested:
"You cannot indict the individual criminals, because
they committed their crimes in the name of their
nation". So is the idea in paragraph ten that be-
cause you cannot conduct a government without agree-
ment among the individuals who form it, they cannot
be guilty of a criminal conspiracy. It obviously
depends upon the question whether the policy on which
they agree is criminal or not. The statements about
Thailand in paragraphs twenty and forty-eight are
contrary to the evidence. Exhibits 1186, '55, 602
and 1275 with the evidence of Colonel Wild, show that
it was the intention to invade Thailand and that it
was done, before any agreement was reached. The

1 contention in paragraph forty-eight with regard to
2 Thailand and in paragraph fifty-eight with regard
3 to the Mongolian Republic that the Tribunal cannot
4 deal with offenses against them because they are
5 not represented in the prosecution and are not
6 proved to have consented to it is, in our submission,
7 equally absurd. In no legal system that I know is
8 the right of prosecution limited to the injured
9 party.

10 Coming now to the motions with regard to
11 individual accused we observe a general tendency to
12 suggest that many of them cannot be guilty because
13 they were career officers or officials. It is
14 necessary to distinguish carefully between the
15 people of such position in the Japan of this period
16 and in some of our own countries. In Japan the
17 service ministers always had to be senior officers
18 nominated by their colleagues, and from 1936 onwards
19 they had to be on active service. With regard to
20 the civilian ministers, many of them from the begin-
21 ning, and from February 1937 onwards almost all of
22 them were also career officials. In each case the
23 practice was for these men to hold career positions
24 one day, become Ministers of State another day, and
25 revert to career positions again after they retired

from what we should regard as political office.
Sometimes, after they had retired from one cabinet
or command, they became Cabinet Councillors or
Military Councillors to a later one. Moreover, even
in their career positions they did not maintain the
tradition of such men in our countries that they
merely carried out their instructions. We find
service officers, both senior and junior, taking
part in plots directed to alter the course of
politics in Japan, and carrying out policies of their
own in their commands, with the sometimes reluctant
acquiescence of the governments whom they were sup-
posed to obey. We find the Army issuing officially
statements of its views on questions of general as
well as army policy. We find ambassadors threatening
to resign, and resigning, when they did not see eye
to eye with the government at home. There was no
discipline among them. Under all these circumstances
it is idle for these accused to shelter behind the
excuse, which might be valid in some countries, that
they were merely career men.

When considering individual responsibility
of each of these men it is our submission that as long
as they held their respective positions with knowledge
of what was happening or with a duty to inquire into it,

1 and without any attempt to relieve themselves of
2 that responsibility, it attaches to them. This
3 applies to all of them, whatever the nature of the
4 position. A soldier can ask to be relieved of his
5 command, if he disapproves of that which he is called
6 upon to do. We have two instances given to us by
7 the TANAKA of men, himself and one other whom he
8 mentioned but did not name, who resigned important
9 positions in the War Ministry, the latter specifically
10 upon the ground that he disagreed with the War
11 Minister's policy. In the last resort it is the
12 duty of even a soldier or a sailor, and equally
13 certainly of a civilian, to disobey an order which
14 he knows to be contrary to International Law. We
15 have so many instances in the evidence of such men
16 disobeying orders or acting contrary to the policy
17 of their official superiors when they did not think
18 it was aggressive enough, that it is idle for them
19 to say they could not have done the same when it
20 was manifestly unlawful.
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1 In the case of cabinet ministers, members
2 of the Privy Council, and men summoned to the Liai-
3 son Conferences, Imperial Conferences, and meetings
4 of ex-premiers, they could have done much more.
5 Not only could they have absolved themselves from
6 personal guilt by voicing their protest, if they
7 really dissented from the policies pursued, and
8 resigning any offices they held. They might easily
9 by so doing have altered the whole course of events.
10 The Japanese system was very stringent in the matter
11 of cabinet unity and responsibility. One dissentient
12 could, by refusing either to resign or withdraw his
13 opposition, force the resignation of the whole
14 cabinet. This is well illustrated by contrasting
15 what happened in the cases of MATSUOKA in July 1941
16 (Ex. 1115-6) and Togo in September 1942 (Ex. 1273).
17 In the case of the Army and Navy Ministers, they
18 could, and Army Ministers did, break up cabinets
19 merely by resigning.

20 We have in the evidence rather stressed the
21 fact, because it is unusual, that certain individuals
22 in the Army and Navy outside the government could
23 prevent the formation of a cabinet, or break it up
24 when formed, by the exercise of their power of nom-
25 inating, or refusing to nominate, or forcing the

resignation of an officer in the service to those cabinet posts. Further the evidence shows that this power was actually used to more effect by the Army than by the Navy, coupled with the occasional outbreak and constant threat of insurrection in the Army to a greater extent than in the Navy. The Navy Chiefs, therefore, if they had wished to stop a particular policy on conscientious or prudential grounds, could at any time have done so by using the same methods which the Army found so effective. Among the civilian ministers there was no outside organization which could interfere in the way the services could, but each individual minister had his own power of action.

Nor is it of any use for any individual to show that his opinion was opposed to a particular aggression, whatever the grounds of that opposition, if he acquiesed in it and retained his position.

Coming now to the Privy Council, that body had a right to examine treaties and other matters of importance. Their meetings were attended by members and officials of the government to explain their views and the reasons for them. The responsibility for their decisions, which invariably

1 supported the government, rests, in our submission,
2 both upon the members and the explainers.

3 The ex-premiers had the responsibility from
4 July 1940 onwards, of consulting with Kido, as Lord
5 Keeper of the Privy Seal, on the advice he should
6 give to the Emperor as to the choice of a succes-
7 sor to an outgoing premier. It was his duty to
8 report their views individually to the Emperor. On
9 each of these occasions, therefore, they had the
10 opportunity of testing the policy of each suggested
11 candidate and influencing it by their choice. This
12 was particularly important in the choice of TOJO
13 in October 1941, and only less so in the war-time
14 changes in July 1944 resulting in the appointment of
15 KOISO, and April 1945 resulting in the appointment
16 of SUZUKI, Kantaro. On each of these occasions
17 HIROTA and on the last two also HIRANUMA as ex-prem-
18 iers had opportunities of making a firm stand for
19 peace. They did not. On the first occasion HIROTA,
20 according to KIDO (Ex. 1154), definitely supported
21 KIDO's recommendation of TOJO against WAKATSUKI's
22 proposal of UGAKI, who might really have stopped
23 it. On the last two both of them supported fighting
24 the war to a finish and concurred in the choices
25 made.

1 Even more vital were the Liaison and Imper-
2 ial Conferences in 1941 and the ex-premiers meeting
3 on November 29th of that year (Ex. 1196 which gives
4 the views expressed by HIROTA and HIRANUMA). Every
5 one who attended those shares with the cabinet
6 and with KIDO the responsibility for what happened.
7 If any one who was opposed to war, especially any
8 one who was opposed to it on moral grounds, had
9 spoken out boldly against it, regardless of internal
10 repercussions, it is more than possible that the
11 Emperor would have refused to sanction war. No one
12 did, if indeed there was anyone who held such views
13 in his heart.

14 I notice a suggestion that three of the ac-
15 cused, HOSHINO, MUTO, and OKA, merely attended the
16 conferences in a secretarial capacity. If that were
17 true, in our submission it does not absolve them.
18 But actually, the evidence, in our submission, shows
19 that, even if that is technically true, they were
20 all persons of much greater position and influence
21 than the word would imply.

22 The decorations received by the various
23 accused during the period, some of which are noted
24 in Appendix B to the Summary, are, in our submission,

1 of particular significance. They vary, of course,
2 in importance with the rank and position of each
3 accused at the time they were awarded. Particulars
4 will be found in the personnel records. We suggest
5 that it is difficult for an accused to deny respon-
6 sibility for a particular matter, when he has accep-
7 ted a decoration for his services in respect of it,
8 especially a high decoration. Particularly im-
9 portant are the decorations of certain of the ac-
10 cused by Germany, the detailed reasons for which are
11 given in Exhibit 1272, and the actual award of some
12 of which is recorded in Exhibit 2247.

13 I now come to take the cases of the accused
14 one by one.

15 THE PRESIDENT: We will recess for fif-
16 teen minutes.

17 (Whereupon, at 1045 hours a recess
18 was taken until 1100 hours, after which the
19 proceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Your Honor, I am afraid
5 it won't be possible for me to take these individual
6 cases in strict alphabetical order owing to the dif-
7 ficulties of time, and to avoid repetition I have had
8 to alter the order somewhat.

9 THE PRESIDENT: We leave it to you entirely,
10 Mr. Comyns Carr.

11 MR. COMYNS CARR: First of all ARAKI. The
12 particulars with regard to him are to be found on
13 page 319 of the Summary. To paragraph 3, further
14 extracts -- all in the small volume, your Honor; the
15 thin volume. I shall only be referring to the thin
16 volume.

17 The particulars with regard to him are to be
18 found on page 319 of the Summary. To paragraph 3
19 further extracts from his interrogations have to be
20 added. They are exhibits 2216, 2217, 2218, 2219, 2220,
21 2221, 2222. To paragraph 4 is to be added exhibits
22 671 and 2223A.

23 This account of the part played by ARAKI in
24 the conspiracy is necessarily an account as given in
25 evidence before this Tribunal. With so vast a story

1 to tell any account must be incomplete but, though
2 nothing is here stated which has not been proved, this
3 statement does not purport to be a complete account,
4 for all purposes, of the part he played.

5 It is impossible to say exactly when ARAKI
6 became a party to this conspiracy but, if he was not
7 one already he entered the conspiracy at least in
8 December 1931 when he became Minister of War. For the
9 five months before this appointment he had been Chief
10 of the General Affairs Department of the Inspectorate
11 General of Military Training and President of the
12 Permanent Examination Committee for Army Officer
13 Students so that he held both these senior positions
14 at the beginning of the invasion of Manchuria. He
15 must, therefore, have clearly understood what the
16 Japanese forces were doing in Manchuria and, by
17 accepting the Post of Minister of War whilst the
18 invasion was in progress, accepted at the same time
19 responsibility for the invasion. Moreover not merely
20 did he, by accepting this position, accept responsi-
21 bility for the military policy which was already being
22 pursued but by ordering further acts of aggression
23 showed how fully he participated in the whole con-
24 spiracy.

25 He stated, during interrogation, that he

1 himself decided on the occupation of General Chang's
2 four provinces shortly after becoming War Minister and
3 obtained the agreement thereto both of the cabinet and
4 of the Privy Council (exhibit 187A). He further stated,
5 during interrogation, that he received a request from
6 the Kwantung Army to set up Manchuria as an independent
7 state, that he could have refused to forward this re-
8 quest to the Prime Minister, but that he forwarded it
9 (exhibit 187). ITAGAKI told TANAKA, according to the
10 latter's testimony (record page 15854) that the Cabinet
11 was opposed to Manchuria being proclaimed an independent
12 state but that ARAKI was in favor of it and told him
13 (ITAGAKI) so.

14 During interrogation ARAKI stated, in rela-
15 tion to the Shanghai Incident on January 28th, 1932,
16 that: he first heard at a Cabinet meeting that the
17 Japanese Navy had landed there; that, as the Navy
18 Minister, who made the announcement, "said it (the
19 incident) could be settled quickly no one was worried;"
20 that the Navy Minister later told him that the naval
21 forces might be destroyed, he (ARAKI) thereupon agreed,
22 as did the Cabinet, that more than a division (about
23 ten thousand troops) should be sent in support and
24 that when the first division sent suffered difficulties
25 he sent another division in support (exhibit 2221).

1 An affidavit by Mr. Stimson, the then United
2 States Secretary of State, stated that on June 23rd,
3 1932, he heard from Mr. Grew, the then United States
4 Ambassador to Japan, that ARAKI had stated that the
5 League of Nations resolutions about Manchuria and the
6 Japanese Government's statements about Manchuria made
7 before Manchukuo was proclaimed independent were not
8 binding on Japan (exhibit 1104).

9 ARAKI's responsibility for the acts of
10 aggression during the period he was Minister of War
11 is also shown by his statements during interrogation
12 that (1) forces cannot be sent overseas without the
13 consent of the War, Navy, and Foreign Ministers and
14 the Premier (exhibit 2216) and (2) if war had ensued
15 as the result of Japan rejecting another government's
16 protest the whole Cabinet would have been held respon-
17 sible (exhibit 2219).

18 If the government and ARAKI, the War Minister,
19 had desired only peace with Russia is it conceivable
20 that the Japanese Military Attaché in Moscow should
21 have spoken, in a report of July 14th, 1932, of being
22 "ready to appeal to arms against Russia, China, and
23 under certain circumstances against America"?
24 (Exhibit 701).

25 Perhaps even more significant, in this

1 connection, is the despatch of July 16th, 1932, by the
2 Chief of the Russian Section of the 2nd Department
3 of the Japanese General Staff to the Japanese Military
4 Attache in Moscow of a statement that "it was decided
5 that. . . preparations for waging war against Russia
6 should be completed before the middle of 1934"
7 (exhibit 702).

8 Moreover exhibit No. 670, an affidavit of
9 TAKEBE, Rozuko, stated that, as a Governor, he heard
10 ARAKI's speech to the Prefectural Governors in 1933
11 and that ARAKI, on a map of the U.S.S.R. and Manchuria,
12 explained Japan's need for the maritime provinces of
13 Siberia and Zabaikalyo.

14 Significant for more than one reason is ARAKI's
15 speech in the film "Critical Period for Japan." (Exhibit
16 No. 148A) It is significant both because of the
17 aggressive sentiments it contains and perhaps even
18 more so, because ARAKI should have been the govern-
19 ment's spokesman to the public in this connection. It
20 is evidence of the leading position he held as an
21 exponent of aggressive nationalism.

22 ARAKI was a member of the Cabinet Advisory
23 Council, which, on his own admission during interro-
24 gation, was set up to advise on the China Incident,
25 from "almost immediately after its formation" in

1 October 1937 till he became Minister of Education and
2 again from September 1939 (a month after he ceased to
3 be Education Minister) till August 1940. On his own
4 admission the Council sat once a week and it was
5 compulsory to attend (exhibit 2217). One incident
6 which occurred during his membership of this Council
7 was the Rape of Nanking.

8 As Minister of Education, a position he held
9 from May 1939 to August 1939 ARAKI is clearly respon-
10 sible for the actions of the Japanese Government
11 during that period. Not merely is his statement,
12 already quoted, about the responsibility of the whole
13 Cabinet for a policy resulting in war, relevant in
14 this connection, but, on his admission, during the
15 time he was Minister of Education foreign affairs
16 were usually discussed at the usual Cabinet meetings
17 held once a week, where the Prime Minister, Foreign
18 Minister and Army and Navy Ministers would also bring
19 up matters of importance (exhibit 2218). During this
20 period the following incidents occurred:

21 ARAKI, as Minister of Education, made a
22 speech on Japan's determination to fight to a finish
23 with China and U.S.S.R. (Exhibit 671).

24 Successive attacks on Soviet territory took
25 place (exhibits 753, 757)..

1 The Japanese Government issued an official
2 declaration about China (exhibit 1291) stating that
3 Japan had practically achieved her end in China, with
4 the national government reduced to a local regime and
5 the main territory conquered but would fight on until
6 it was completely destroyed.

7 A cultural agreement was made with Germany
8 (exhibit 589).

9 Military training in boys' schools was
10 increased by an ordinance issued on November 30th,
11 1938 (exhibit 135).

12 The Premier KONOYE on 22 December 1938 stated
13 Japan's determination to exterminate the Kuomintang
14 Government (exhibit 972).

15 The Anti-Comintern Pact was strengthened by
16 first Hungary and Manchuria and then Spain being
17 admitted.

18 Hainan Island was seized by the "forcible
19 landing of Japanese forces."

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1 It was whilst such a policy was being pur-
2 sued that ARAKI was appointed President of the General
3 National Mobilization Committee on 28 March 1939.
4 It is clearly inconceivable that such a post should
5 have been confided at such a time to anyone who
6 was not heart and soul in sympathy with, and an ac-
7 tive supporter of the criminal conspiracy for world
8 conquest on which the Japanese Government was en-
9 gaged.

10 It is submitted that the confidence thus
11 shown in ARAKI by his fellow conspirators after all
12 these years of aggression is very significant of their
13 confidence in him. It is further submitted that his
14 whole record shows that this confidence was fully de-
15 served.

16 Although he protests that he was friendly to
17 Britain and America, this is not in accord with his
18 speeches or the teaching of the film in which he ap-
19 peared, and we submit that the war against them was
20 the logical result of the policy he all along advo-
21 cated.

22 I am told that I gave a wrong date with re-
23 gard to his position as Minister of Education, I
24 should have said from May 1938, I believe I said 1939 --
25 May 1938 to August 1939.

1 DOHIHARA. The particulars with regard to
2 him are on page 319 of Appendix B. In addition he
3 is mentioned in the following pages of the record:
4 2024, 2028-9, 2034, 2036-8, 2041, 2104-5, 2113, 2120,
5 2124-6, 2130-3, 2139, 2284 (Exhibit 197), 2312-6,
6 2334-7, 2336-7, 2362-3, 2367-70, 2374, 2381, 2436-40,
7 2442-3, 2448, 2794, 2815-6, 3018, 3102-3, 3211-12,
8 3231-33, 3237, 3729, 3730, 3756-9, 3816, 3962, 4124,
9 5491, 14273-8, 15713-30 (Exhibit 2190-A), 15857,
10 15921-15937 and 16258 (Exhibit 2282).

11 Prior to 1931 DOHIHARA had spent almost 18
12 years in China. In July 1931 he left Tokyo to take
13 charge of the Special Service Organization at Mukden
14 and to investigate the death of Captain NAKAMURA. He
15 arrived in Mukden on 18 August but was again back in
16 Tokyo early in September (Exhibit 2190-A). There he
17 was quoted by the press as "the advocate of a solution
18 of all pending issues if necessary by force and as
19 soon as possible "(Exhibit 57, Lytton Report, at page
20 66). DOHIHARA was then a Colonel.

21 He arrived back in Mukden a few days after the
22 Incident had broken out and was made Mayor of Mukden,
23 a position which he held until 26 November 1931.
24

25 At the end of October we find him at Tientsin
with instructions from the Kwantung Army to interview

1 Pu-Yi and to tell him that the Kwantung Army would wel-
2 come his return to Manchuria (Exhibit 2190-A). If
3 these were his only instructions he greatly exceeded
4 them. A series of consular telegrams to Foreign Min-
5 ister SHIDEHARA (Exhibits 181, 288-294, 300 and 303)
6 show him as actively engineering the return of Pu Yi
7 and family to Manchuria against the wishes of his gov-
8 ernment and its national policy; they show him as ad-
9 mitting that the state of affairs in Manchuria had been
10 brought about by the Japanese military authorities in
11 Manchuria; they show him hinting that, if the govern-
12 ment intervened in Manchuria, the Kwantung Army would
13 separate from the government and assassinations would
14 break out in Tokyo, and they show him as engineering
15 an outbreak at Tientsin to prevent evacuation of Japan-
16 ese forces therefrom. Exhibit 57, Lytton Report, at
17 pages 75 to 6 shows that trouble did break out in
18 Tientsin on 8 and 26 November 1931.
19

20 At the end of November he took charge of the
21 Special Service Organization at Harbin (Exhibit 2190-A).
22 Shortly after this he is endeavoring to arrange for
23 Chinese General Ma Chan-Shan to accept the post of
24 Minister for War in the Changchun puppet government
25 (Witness Powell 3231 and following). In April 1932,
his work in Manchuria completed for the time being, he

1 returned to Japan where he remained until July 1934.

2 Ching Teh Chin at page 2334 characterizes
3 him as the instigator of the Mukden Incident, and on
4 page 2438 tells the Tribunal that a week before the
5 Incident mutual friends of DOHIHARA and himself had
6 told him that DOHIHARA was going to Manchuria to em-
7 bark on some big project. Pu Yi, who would be in a
8 position to know, states that at the time of the
9 Incident he was reliably informed that for whatever
10 accident or incidents that then happened DOHIHARA was
11 the man who was pulling the strings behind (page 4124).
12 His own government in 1934 was happy to give him the
13 credit of playing an important role as, on the 29th
14 of April, he was "decorated with the Order of Double
15 Rays for Meritorious Service in the Incident between
16 1931 and 1934" (Exhibit 104). But from April 1932 to
17 July 1934 he was a Major-General commanding a brigade
18 at Hiroshima, Japan, so obviously the services that
19 were being requited were those rendered before May 1932.
20

21 From the foregoing it appears that DOHIHARA
22 was an instructor and very active participant in the
23 Manchurian Incident. So far is he from a soldier car-
24 rying out his duties that many of his actions were in
25 defiance of and against the wishes of the government
by whom he was employed.

In July 1934 he is back at Mukden with the
1 Special Service Organization and again attached to the
2 Kwantung Army. Throughout the period from 1931 to
3 1935 the control of opium was vested in the Special
4 Service Organization of the Army. Large revenues were
5 delivered from it, and these presumably remained with
6 the Army until 1935 when the Opium Control Board was
7 set up and revenue went to the Manchukuo Government
8 (Record pages 15855-8). After the Chahar Incident of
9 June 1935 he goes to Peiping and represents the Japanese
10 in negotiations to settle the Incident. The final
11 terms were such as to greatly weaken the Chinese
12 National Government in Chahar (page 2313). On orders
13 of the Commander-in-Chief of the Kwantung Army he
14 endeavored to set up an autonomous regime in North
15 China. To do this he attempted to estrange the local
16 government from the National Government. He succeeded
17 in setting up the Hopei-Chahar Regime and the East
18 Hopei Regime in November 1935, but failed to establish
19 the North China autonomous government (2028-2034).
20 He exerted pressure on General Sung to proclaim a
21 North China autonomous government and made political
22 and economic demands the rejection of which, according
23 to the evidence of General Ching Teh Chun (2323-2334),
24 led up to the Marco Polo Bridge Incident. Confirmation

1 of the attempt to form autonomous government in North
2 China is contained in consular telegram to Foreign
3 Minister HIROTA on 2 October 1935 (Exhibit 197).

4 In February or March 1936 he returned to
5 Japan where he remained as Lieutenant General command-
6 ing a division until 25 August 1937. He then went to
7 North China as Commander of the 14th Division and took
8 part in the drive from Peiping towards Hankow. He
9 went to Japan on 1 June 1938, but was sent back to
10 China by his government from August 1938 to June 1939
11 to see what he could do about settling the war. As
12 Chief of the Mission he conducted some negotiations
13 with Chiang Kai-Shek, through intermediaries, but
14 nothing came of them. From that time onwards he com-
15 manded the 5th Army in Taonan, Manchuria until June
16 1940 (Exhibit 2190-A).

17 On 29 April 1940 he was decorated with the
18 2d Class of the Golden Kite for meritorious service
19 in the Chinese Incident.

20 He became Supreme War Councillor on 28 Septem-
21 ber 1940, a post which he seems to have held sometimes
22 concurrently with other appointments, until March 1944.
23 He was promoted to General on 28 April 1941, appointed
24 Chief of the Air Inspectorate General on 9 June 1941.
25 On 17 May 1942 (Exhibit 1272) he was recommended for

1 the German Grand Cross, and I quote from the citation:
2 "By constant, close and friendly cooperation with the
3 Air Attaché he has in a leading position contributed,
4 in the true sense of the Tri-Partite Pact, to the ex-
5 tension and deepening of the military alliance." He
6 became Commander of the Eastern District Army on 1
7 May 1943 (Exhibit 104). This army command embraced an
8 area around Tokyo (Exhibit 2282) in which prisoners
9 of war camps were situated. There is evidence of his
10 having visited the Naoetsu Prisoner of War Camp in
11 Nigata Prefecture in September or October 1943. At
12 this camp 60 prisoners died from starvation and ill-
13 treatment. Conditions did not improve after his visit
14 (page 14270-14280). Article 3 of the Prisoner of War
15 Internment Camp Ordinance (Exhibit 92) places respon-
16 sibility for administration of the camp on the Army
17 Commander, and, therefore, DOHIHARA has a direct
18 responsibility for conditions at this camp and others in
19 his area of command and the deaths that resulted
20 therefrom.

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In March 1944 he became commander of 7th
1 Area Army at Singapore and retained that appointment
2 until early April 1945 (Exhibit 104). This command
3 embraced Malaya, Sumatra, Java and Borneo (Exhibit
4 2282). It is sufficient to direct attention generally
5 to evidence given as to treatment of prisoners of
6 war in those areas and the thousands of murders and
7 unnecessary deaths that took place there. For the
8 reasons above stated DOHIHARA must take direct re-
9 sponsibility for treatment of prisoners of war in
10 those areas between March 1944 and early Arpil 1945.
11 Examples are exhibits 1513A - 1516A, 1518A, 1528A,
12 and Colonel Wild's evidence, page 5491.

14 It is submitted that DOHIHARA was an active
15 participant in the conspiracies alleged at least
16 from some time prior to the Manchurian Incident,
17 that he continued to participate in them until the
18 end, and that he was one of the instigators of the
19 Manchurian and Marco Polo Bridge Incidents, that as
20 a professional soldier he furthered the conspiracies
21 and committed the crimes alleged against him sometimes
22 by exceeding his instructions and duties and at others,
23 notably in connection with treatment of prisoners of
24 war, by failing to carry out the obligations imposed
25 on him by virtue of his military command.

1 HASHIMOTO

2 His particulars are in Appendix B, page 320.
3 The additional documents particularly relating to him
4 are exhibits 2185 to 2188.

5 His main function in this conspiracy was as
6 a propagandist -- his proved activities in this
7 direction extending from 1931 (See e.g. Exhibits 1290A
8 and 2185) to January 1942 (Exhibit 675A). If OKAWA
9 was rather the man who provided the ideas behind the
10 conspiracy, HASHIMOTO was a principal among those who
11 popularized them.

12 Exhibit 734A shows that as early as 1929 he
13 was advocating sabotage in the USSR and possible
14 military occupation of the Caucasus.

15 The evidence of TANAKA, together with that
16 given at OKAWA's trial (Exhibits 2177-2178A and 2231),
17 and exhibit 179F from KIDO's diary, establish the
18 leading part he played, while a lieutenant colonel
19 in the Army General Staff, in the plotting of the
20 Mukden Incident and in all the associated plots of
21 that period for the overthrow of the comparatively
22 peaceful cabinets in office then in Japan. He
23 organized in 1931 the Sakura-Kai and later the
24 Dai-Nippon Senen-to, both extremist societies.

25 He was serving as an artillery commander in

the neighborhood of Nanking at the time of its fall
and after. He admits that it was he who fired on
H.M.S. Ladybird although he claims it was by superior
orders.

MATSUI

(Particulars with regard to this accused are to be found on page 330 of the Summary). There are no additional documents.

The accused MATSUI was born on 27 July 1878.
He graduated from the Military Staff College and
after having held various military appointments was
appointed commander of the 11th Division in 1929
(Exhibit 115).

On 9 December 1931 he proceeded to Geneva
as a delegate to the Disarmament Conference and was
appointed Supreme War Councillor on 18 March 1933
(Exhibit 115).

In 1933 he was appointed commander of the Formosan Army Corps and on 28 August 1935 placed on the Reserve List.

On 15 August 1937 he was appointed commander of the Shanghai Expeditionary Forces (Exhibit 115).

On 30 October 1937 he was appointed commander-in-chief of the Central China Expeditionary Forces and concurrently commander of the Shanghai Expeditionary

1 Forces (Exhibit 115).

2 MATSUI was released from service on 5 March
3 1938 and on 20 July 1938 was appointed a Cabinet
4 Councillor, which appointment he held until 23 Jan-
5 uary 1940 (Exhibit 115).

6 On 5 July 1939 he was appointed to the
7 Committee of the East Asia Commission.

8 Exhibit 168, page 1674, dated 8 July 1942,
9 discloses that he was vice-president of the Greater
10 Japan East Asia Prosperity Alliance and advisor to
11 the Japan Imperial Rule Assistance Headquarters Adult
12 Corps. The same exhibit discloses that he was advisor
13 to the Central Headquarters of the Greater Japan
14 Imperial Rule Assistance Association.

15 On 29 April 1934 he was decorated with the
16 Grand Cordon of the Rising Sun for meritorious service
17 during the war 1931-1934; and 29 April 1940 he was
18 decorated with the First Class Order of the Golden Kite
19 for meritorious war service during the China Incident
20 (Exhibit 115).

21 At the time of the Ladybird and Panay
22 Incidents, MATSUI was commander of the Central China
23 Expeditionary Forces, which consisted of two armies,
24 one commanded by Prince ASAKA and the other by Lieuten-
25 ant General YANAGAWA. While it is clear from the

1 interrogation of the accused HASHIMOTO that the order
2 to sink all vessels proceeding towards Nanking,
3 without regard to their nationality (Exhibit 2188,
4 page 15,678), was issued by Lieutenant General YANAGAWA,
5 it is submitted with or without that evidence that as
6 commander of the entire forces responsibility for the
7 order falls upon the accused MATSUI.

8 Prior to the attack upon Nanking, MATSUI
9 issued a proclamation which was widely distributed by
10 airplane, declaring that the Japanese Army had only
11 good will for the peaceful citizens of China and would
12 do no harm to those who did not resist the Imperial
13 Army (page 2632, Dr. M. S. Bates).

14 The troops that entered Nanking from the
15 13th to 16th of December 1937 were experienced troops
16 officered by experienced men (Exhibit 257, page 3460,
17 interrogation of MATSUI).

18 The evidence discloses that there was no
19 resistance in the city on the part of the Chinese
20 (page 2628, Dr. M. S. Bates).

21 Page 3894, John G. Magee, there is also
22 evidence that on the 13th of December all Chinese
23 soldiers had left the city (page 2558, witness Hsu-Chuan-
24 Ying).

25 On the 17 December 1937 MATSUI entered the

1 city and a military review was held which was followed
2 on the 18th of December by a memorial service and a
3 press release by General MATSUI dated the 18th December
4 1937 (Exhibit 262, page 3510) states that the army
5 having become considerably exhausted it is necessary
6 for troops in general to take a little rest because
7 the army has been engaged in unremitting landing oper-
8 ations for four months.

9 The accused MATSUI left Nanking one week
10 after his entry on 17 December when he returned to
11 Shanghai. (Exhibit 257, page 3459, interrogation of
12 MATSUI).

13 Evidence of Dr. H. O. Wilson (page 2536),
14 G. A. Fitch (page 4460), Dr. M. S. Bates (pages 2629,
15 2630) and John G. Magee (page 3894) makes it clear
16 that thousands of civilians, including women and
17 children, were killed by Japanese soldiers inside the
18 walls of the city and thousands more were marched to
19 the bank of the Yangtze River and mowed down by machine
20 gun fire.

21 The witness, Dr. M. S. Bates, further states
22 that more than 30,000 soldiers who had surrendered and
23 laid down their arms were cut down by machine gun fire
24 within the first seventy-two hours immediately outside
25 the walls of the city. (Page 2630).

Exhibit 324, page 4537, being a chart showing victims buried, shows a total of 155,337, while exhibit 327, page 4547, being a report on war crimes at Nanking prepared by the procurator of the district court, states that the number of victims killed totalled 278,586.

6 There were thousands of cases of rape (page
7 2634, Dr. M. S. Bates) and looting was carried on on
8 a vast scale. In some cases it was well organized
9 and fleets of armed trucks under the direction of
10 officers were used to remove the stolen property
11 (page 2635). Approximately one-third of the city was
12 destroyed by fire (page 4592, Exhibit 329).

A German Foreign Office in China report
(page 4604, Exhibit 329) states that the fall of Nanking
clearly shows a lack of discipline, atrocities and
criminal acts not of an individual but of an entire
army. In our submission much of it must have been
deliberately ordered.

Both Dr. Bates (page 2644) and John G. Magee (page 3928) state that there were an inadequate number of military police available in Nanking and that the gendarmes began to do the same things the soldiers were doing.

The evidence shows that complaints were made almost daily to the Japanese Embassy at Nanking (page

1 3922) and reports from members of the diplomatic corps
2 and their press men that the Japanese Army at Nanking
3 had committed atrocities were reported to the Foreign
4 Office (ITO, page 3506).

5 The atrocities continued for weeks after the
6 fall of the city and Dr. Bates states (page 2644) that
7 after February 6 and 7 there was a notable improvement
8 in the situation and although many serious cases occurred
9 between then and the summer they were no longer of a
10 mass or wholesale character.

11 Mr. Magee (page 3922) states that after about
12 six weeks it began to taper off, although many individ-
13 ual things happened after that.

14 The witness, Hsu-Chuan-Ying at page 2954
15 says that the Japanese authorities did not try to
16 stop the atrocities and not a single proclamation or
17 notice was put up on the street to stop them. Both
18 John G. Magee (page 3941) and Dr. Bates (page 2642)
19 say that there was no serious effort made to stop the
20 atrocities.

21 It is interesting to note that so far as
22 punishments were concerned, MATSUI's recollection is
23 that the only entries in his diary concerned the
24 court martial of an officer, and perhaps three soldiers,
25 in connection with rape of Chinese women in Nanking.

1 MATSUI returned to Japan in February of
2 1938 and was succeeded by General HATA on the 17
3 February 1938 (Exhibit 256, page 3445). Upon his
4 return, according to his interrogation (page 3464)
5 MATSUI was not asked to make a report but states that
6 while he does not know for certain there must have
7 been investigations and reports. That his recall
8 was merely window-dressing is shown by his appoint-
9 ment within a few months as Cabinet Councillor and
10 his subsequent high decoration for his services.

11 With regard to his political activities, in
12 1929 MATSUI, in his capacity as director of the
13 Second Section of the General Staff, called a meeting
14 in Berlin of all the military attaches in European
15 countries (interrogation of MATSUI, Exhibit 733A,
16 page 7644) at which meeting there was discussed
17 sabotage measures to be taken in case of war with
18 the USSR and a survey of the future activities of
19 White Russians in foreign countries and the intelligence
20 work against the USSR by Japanese military attaches
21 stationed outside of that country.

22 Exhibit 732A, page 7658, the witness, General
23 Ching Teh-chun, states that in the autumn of 1935
24 MATSUI was in Peiping hoping to establish a branch of
25 the Greater East Asia Association and advocated in his

1 conversation with General Ching that Asia should
2 be the Asia of the Asiatics and that European and
3 American influences should be expelled (page 2317).

4 On the 14 July 1937, according to KIDO's
5 diary, MATSUI called and he talked on matters such as
6 discontinuing the dispatch of troops to North China
7 and became indignant (Exhibit 2254, page 16217) and
8 the affidavit of YAMAGITA, commander of the Kwantung
9 Province Defense Army, describes MATSUI as one of the
10 military authoritics in Tokyo active in the occupation
11 of Manchuria (Exhibit 723, page 7580).

12 At the time of his arrest MATSUI was president
13 of the League for the Revival of Greater East Asia
14 and belonged to a number of Pan-Asiatic organizations
15 (interrogation of MATSUI, Exhibit 733A, page 7644).

16 It is submitted that MATSUI was a member of
17 the conspiracy throughout the entire period charged
18 and the motion made on his behalf should be dismissed.
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1 HATA

2 The particulars with regard to HATA, Shunroku
3 are to be found in Appendix B, page 321 of the Summary.
4 No additional documents were presented at the conclusion
5 with regard to this accused.

6 It appears from his interrogation (Exhibit
7 256) that the date given in these particulars for the
8 termination of his first period in China, taken from
9 his personnel record, is inaccurate and that he was
10 in fact there until November 1938, being a Military
11 Councillor concurrently. On the other hand his command
12 was during that period confined to Central China.

13 This accused participated in Japan's overall
14 aggression in at least three different ways: (1) He
15 carried on aggressive warfare in China at two different
16 periods of time as commander of various armies in China.
17 (2) As Minister of War from August 30, 1939 to July
18 22, 1940, he helped determine the national policy and
19 worked on the plans and preparations for aggressive
20 war during that period; and (3) He was one of the
21 prime movers in the overthrow of the YONAI Cabinet
22 thus giving new direction and expansion to the entire
23 conspiracy.

24 After serving for many years in the Army, the
25 accused at the time of the outbreak of the Marco Polo

Bridge Incident was commander of the Formosan Army.
1 In August 1937, shortly after the outbreak, he was
2 recalled to Tokyo to become Inspector General of
3 Military Education, one of the three highest offices
4 in Japan which controlled army policy and, through
5 its control of the War Minister, could effectively
6 control cabinet and other governmental policy and
7 decision. (Exhibit 102). At the very outset of the
8 China Incident, the accused was in a strong strategic
9 position to affect policy. On February 14, 1938, the
10 accused was appointed to succeed the accused MATSUI
11 as Chief of the Expeditionary Forces to Central China
12 (Exhibit 102) and admittedly assumed command on
13 February 17th. (Record 3445). He remained there until
14 November and while there he directed the seige and
15 capture of the city of Hangkow (Record 3447-3451; Exhibit
16 256).
17

After his return from China he occupied the
18 position of military counsellor and from May 25, 1939
19 to August 30, 1940, he was chief aide de camp to the
20 Emperor. On August 30, 1939 he became Minister of War
21 in the ABE Cabinet and remained as such throughout
22 the ABE and YONAI Cabinets until July 22, 1940. During
23 his administration several of the important acts involving
24 furtherance of the conspiracy were carried out. Certain
25

industries such as the Cast Iron Manufacturing Facilities
1 industry were brought under control. (Record, page
2 8327, 8403, 8299). On October 12, 1939, the accused
3 appointed the accused MUTO as Chief of the highly
4 important Military Affairs Bureau in the War Ministry
5 and as a member of several government bodies such as
6 the Planning Board, Manchurian Affairs Board and the
7 Cabinet Information Board (Exhibits 102 and 118).
8 In November, Imperial General Headquarters, which had
9 never been established heretofore except in case of
10 war, was set up (Exhibit 80). During the ABE Cabinet
11 in November 1939, pressure was put on France to give
12 Japan special rights in French Indo-China (Exhibits
13 616-A, 618-A). Shortly after the YONAI Cabinet was
14 formed on January 16, 1940, pressure was put on the
15 Netherlands for special rights in the Dutch East
16 Indies (Exhibit 1309-A). On February 16th, the Military
17 Mission at Harbin drew up a plan for establishing a
18 Far Eastern Anti-Comintern to unite sabotage activities
19 against the Soviet Union (Exhibit 736). During this
20 administration the economic policy for relieving Japan
21 of its dependency on the United States for military
22 goods necessary to carry out the divine war was
23 adopted (Exhibit 1007). During the same month of March
24 the program of the Kwantung Army for Aggression against

1 the Soviet was sanctioned (Exhibit 705). On March 30th
2 the puppet Central Government of Wang Ching Wei at
3 Nanking was established (Exhibit 276-A). Severer
4 regulations were put into effect by the War Ministry
5 with respect to military training in schools (Exhibit
6 137). The accused attended the four ministers conference
7 of June 18, 1940, which decided to make certain requests
8 upon France, and in the event of refusal to use force
9 (Exhibit 619). Following this a further program
10 of pressure was put into effect against France (Exhibits
11 615-A, 618-A).

12 In the meantime the aggressive war was being
13 pushed ahead in China. In March 1940, the accused as
14 War Minister made it clear that Japan's progress would
15 not be stopped by the Nine Power Treaty (Exhibit 514).

16 Throughout his administration, efforts at
17 reviving the proposed pact with Germany were constantly
18 being made. On July 12th and 16th, 1940, there were
19 joint conferences between the War, Navy and Foreign
20 Offices, in which it was decided that there was a
21 strong demand for the conclusion of a military alliance
22 with Germany and Italy to realize Japan's plan for
23 expansion in East Asia and the South Seas, whereby
24 Japan and Germany would respectively support each
25 other's policies (Exhibits 527, 528).

1 To bring about an agreement with Germany
2 and Italy the military had decided that the YONAI
3 Cabinet was unfitted for the task. On July 8th this
4 accused had let it be known that the YONAI Cabinet was
5 not suitable to negotiate with Germany and Italy
6 (Exhibit 532) in view of the then world situation.
7 On July 16th HATA submitted his resignation and at the
8 Three Officers Meeting of which the accused was a
9 member, it was found impossible to name a successor and
10 the Cabinet was compelled to resign en masse (Exhibit
11 532). As War Minister the accused was one of the three
12 men who determined whether or not the War Minister
13 would resign and who, if anyone, would be allowed to
14 become his successor. While it is true that control
15 of the army was divided between matters of administration,
16 being handled through the Cabinet and matters of high
17 command, it should not be overlooked as learned counsel
18 for the defense has overlooked that the War Minister
19 himself had a dual role. The evidence is clear that
20 on the one hand he was in charge of administration for
21 the cabinet, while on the other hand he was a member
22 of the high command. So far as policy is distinguished
23 from operations is concerned, in the carrying out of
24 which function he was not subject to cabinet control.
25 HATA, as a member of the group of Three Officers Meeting

had to concur in all three actions taken: (1) the determination of his own resignation; (2) the refusal to appoint a successor, and (3) the designation of a successor in the new cabinet. In all three decisions the accused HATA played an active role. As his last official act as War Minister he put into office as War Minister the accused TOJO, having designated him to the Emperor before KONOYE had made known his new cabinet. (Exhibit 532).

From March 1, 1941 to November 22, 1944, the accused was commander in chief of the Expeditionary Forces to China (Exhibits 102, 106). Exhibits 1887 to 1915, describe the conditions and treatment of prisoners of war and civilian internees during his administration and while he was commander in the area with basic responsibility for the handling of prisoners of war there. (Exhibit 1991) HATA on 13 August 1942 issued regulations for punishment of enemy air crews providing for death penalty.

He is charged in Count 45 with responsibility for the attack upon and rape of Nanking, when he held his important post at the War Ministry, and in Counts 47-50 with similar attacks upon and outrages in other cities in China which have been proved to have taken place at dates when by his own account he was commander

1 in chief of the Expeditionary Forces in the parts
2 of China concerned. See record, page 3392-9 and
3 4609 as to Hankow, Count 47; page 4612-3 as to Changsha,
4 Count 48; page 4611-2 as to Hangyang, Count 49; page
5 4653-4 as to Kweilin and Liuchow, Count 50; see also
6 Exhibits 331-42, 344, 350, 351, 360. The attack on
7 Canton, Count 46 was made by the South China force and
8 he can only be held responsible for that on the basis
9 that it was an act of the conspiracy of which we contend
10 he was a member. Evidence is page 4648-50. In our
11 submission these charges, which are based both upon
12 the unlawful character of the war and the barbarous
13 manner of conducting it, are adequately established,
14 as well as the charges under Counts 44 and 53-55.

15 THE PRESIDENT: Would you suggest this is
16 a convenient break, Mr. Carr? This might be a con-
17 venient break.
18

19 MR. COMYNES CARR: If your Honor please.

20 THE PRESIDENT: We adjourn until half-past one.
21 (Whereupon, at 1200, a recess was taken.)
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MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. SHIMANOUCHI.

MR. SHIMANOUCHI: Mr. President, on

Thursday last I made a statement to the Tribunal
which is an error. In tendering exhibit 2230,
Associate Prosecutor, Mr. Tavenner stated that
in May 1939 OSHIMA refused to carry out certain
instructions from his government. To this I
replied that OSHIMA shortly afterwards communi-
cated the instructions from the Japanese Govern-
ment to the German Government, and that this was
clear from the document introduced by the prosecu-
tion last year. However, after examining the
record, it was found that the document introduced
by the prosecution last year and the document
referred to by me was exhibit 506. It states:
"It had not been possible for OSHIMA to act
directly contrary to his Government..... OSHIMA
had postponed the fulfillment of the demarche until
now." Moreover, this relates to other matters in
September 1939, and does not concern matters in
May 1939, as referred to by Mr. Tavenner.

I respectfully request, therefore, that
my statement found on page 15,992 of the record,

1 lines 20 to 25, be stricken, and I hereby tender
2 my humble apology. I spoke of this matter to
3 Mr. Tavenner two or three days ago when I met him,
4 and I had intended to make this correction yester-
5 day morning and had handed the draft of my state-
6 ment to the interpreters, but I was unable to find
7 the occasion until now.

8 Thank you.

9 THE PRESIDENT: The correction is noted.

10 There is no need for your apology, as you spoke
11 in all good faith.

12 Mr. Comyns Carr.

13 MR. COMYNS CARR: Your Honor, before I
14 proceed with the next case, I would like to men-
15 tion a matter with respect to MATSUI. I under-
16 stand that the defense challenged the statement
17 that the accused MATSUI is the person referred to
18 in exhibit 2254, a KIDO Dairy entry of July 14,
19 1937. The diary entry only gives the surname,
20 but as the only other MATSUI who has so far been
21 mentioned in this case was in China on that date
22 there is some material for saying that this
23 entry must be this MATSUI. But I am content that
24 you should disregard the matter until it is
25 cleared up.

KAYA

1 The particulars in his case are on page
2 326 of the summary. There are no additional
3 documents.

4 He was a finance official throughout,
5 one of those who passed to and fro between what
6 we should call Parliamentary and Civil Service
7 positions. We submit that this was part of the
8 pernicious system by which the government of
9 Japan was taken in 1937 out of the hands of those
10 who had some kind of responsibility to the people
11 of Japan, and handed over to bureaucrats such
12 as KAYA. But we also submit that those bureau-
13 crats had just as much responsibility for their
14 acts as any other holder of Parliamentary office.
15 The extracts given do not indicate more than a
16 few of the numerous offices he held, which may
17 be seen in exhibit 11, and show that from time
18 to time he had a finger in a great many pies.

19 He was Vice-Finance Minister 2 February -
20 4 June 1937 in the HAYASHI Cabinet, and Minister
21 from then until 26 May 1938 in the 1st KONOYE
22 Cabinet. The first period saw adoption of the
23 5-year plan for steel, of the 3rd Administration
24 policy towards China (exhibit 218) the idea being
25

to obtain material for munition industries. Many
measures relating to the control of Japanese in-
dustry and development for war purposes were
started. No sooner had he become Finance Minis-
ter than the main 5-year plan was adopted and
vigorously put into execution throughout his
period. When the new "China Incident" broke out
he was a party to the Cabinet decision of July
11th to extend it. From then on he shares the
responsibility which I have already described in
other cases for the whole course of the Chinese
aggression and the rape of Nanking. I do not
propose to repeat even the very brief account of
this period which I have already given. It can
be more fully studied in the summary, pages 45-71,
and by reference to the evidence there quoted.
We submit that it was one of the worst periods
of Japan's career of aggression. Soon after he
left the post of Finance Minister he became an
adviser to his successor, and on 14 August 1939
he became president of the North China Develop-
ment Company. This was an official organization
formed to promote the Japanese policy of control-
ling and developing the economics of North China
in the interest of the Japanese forces and for

1 building up munitions supply. See the testimony
2 of Liebert, page 8474, and exhibit 459A. We sub-
3 mit that in this office he was promoting the
4 conspiracy just as much as if he had continued to
5 hold Cabinet rank.

6 On October 18, 1941 he again became
7 Finance Minister in the TOJO Cabinet, and so con-
8 tinued until February 19, 1944. He was thus a
9 member of the Cabinet responsible for starting
10 and continuing the Pacific War. He was responsible
11 for the decision on 31 October to issue the
12 military currency for the areas proposed to be
13 occupied (exhibit 852). He was one of the four
14 Ministers who answered at the same time the question
15 propounded by the Liaison Conference (exhibits
16 1328, 1329) as to the probable effects of war.
17 The Cabinets of which he was a member decided on
18 4 November (exhibit 1167) to conceal from the
19 Japanese public all information as to war prepa-
20 rations and give them hope for the future, and
21 on 28 November to put the press on a war-time
22 basis! He attended the Imperial Conference of
23 5 November which in effect decided on war. He
24 was present at the fatal Imperial Conference of
25 December 1st, and assented to the final decision

1 to make war (exhibits 588, 1107); and shares the
2 responsibility with other members of the Cabinet
3 for all that was done in that connection.

4 He attended the Privy Council meeting
5 on December 8th (exhibit 1241) which approved the
6 issue of the declaration of war when they knew
7 very well the war had started some hours earlier,
8 and heard TOJO say that the negotiations had only
9 been continued since December 1st for the sake
10 of strategy, and that the avoidance of a decla-
11 ration against the Netherlands was for strategic
12 convenience. He took part in this discussion.

13 He heard the secretaries report that they had been
14 informed by TOJO at 8:00 p. m. on December 7th
15 that the declaration would come during the day.
16 He made no protest, expressed no surprise, and
17 retained office. We submit the irresistible
18 inference is that none of it was news to him.

19 He attended the Privy Council meeting on 10
20 December on the agreement with Germany and Italy
21 for joint waging of war against United States
22 and Britain, no separate peace, and collaboration
23 for a new order (exhibit 1267).

24 Both these meetings he attended, not
25 as a member of the Privy Council, to receive

1 information and pass upon it, a responsibility
2 serious enough, but as a member of the govern-
3 ment, to explain and defend their action.
4

5 When he finally left office on 19
6 February 1944 he again promptly became an ad-
7 viser to the Finance Ministry until the surrender.
8

9 With regard to B and C offenses he not
10 only had the responsibility of every member of
11 the Cabinet during his two main periods of of-
12 fice, which I have described above, but it is
13 impossible to conceive that such a large opera-
14 tion as the construction of the Burma-Siam
15 railway could have been carried out without
16 consultation with and consent of the Minister
17 of Finance. If he was ignorant of the outrages
18 in China, and throughout the theatres of the
19 Pacific War, which is incredible, it could only
20 have been by deliberate abstention from using
21 the obvious sources of knowledge, which it was
22 his duty to invoke.
23
24
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HIKANUMA

1 The particulars with regard to him are on
2 page 322 of the Summary. Additional document spe-
3 cially relative to him is exhibit 229, speech as
4 Premier in March 1939.

5 He was the founder and president of the
6 Kokuhonsha, a rightist society (Ex. 164), and at the
7 same time vice-president of the Privy Council from
8 1926 until he became president on March 13, 1936.
9 For that purpose he was compelled to resign from the
10 Kokuhonsha which was dissolved. He remained presi-
11 dent of the Privy Council and also a cabinet
12 councillor -- pausing there, there seems to be some
13 doubt as to whether the entry in the personnel re-
14 cord concerned cabinet councillor or some other kind
15 of councillor -- until he became Premier on 5 January
16 1939. During all his service in the former capacities
17 we submit that the positions he held not only gave
18 him the opportunity of passing judgment upon all the
19 principal decisions taken, especially with regard to
20 international agreements, but gave him the power to
21 register his objections, if any, to the general
22 policies pursued. As he continued to hold his
23 offices he must be taken to have accepted them.
24 In particular on 13 September 1932 (Ex. 241) he

1 approved the proposed agreement between Japan and
2 Manchukuo, based on recognition of the latter's so-
3 called independence. On 3 July 1935 he approved a
4 similar agreement for a joing economic committee
5 (Ex. 850). On 25 November 1936 he approved the
6 Anti-Comintern Pact (Ex. 485). On 20 January 1937
7 he approved the bill relative to the formation of
8 a South Seas government department (Ex. 909-A). On
9 6 November 1937 he approved the admission of Italy
10 into the Pact (Ex. 492). On 2 November 1938 he
11 agreed to the final withdrawal of Japan from the
12 League of Nations because of the attitude of the
13 League to the "China affair." On 22 November 1938
14 he approved the cultural agreement with Germany,
15 the political influence of which was mentioned at
16 the meeting. As a councillor he was there to advise
17 on the whole of the early stages of the China affair,
18 and could have made his protest, but he retained
19 his offices. In exhibit 2265 KIDO records a talk
20 with him on 26 December 1938 about a plot to establish
21 the puppet government of China, and he insisted that
22 KONOYE should remain Premier to see it through.

23 His Premiership from 5 January to 30 August
24 1939 was chiefly remarkable for the negotiations for
25 a military alliance with Germany and Italy, which only

1 fell through because of the German-Russian Non-
2 Aggression Pact, which caused his resignation.

3 At the outset SHIRATORI reports him to
4 Ciano as openly in favor of it (Ex. 499-A). On 22
5 February he attended as Premier a Privy Council
6 meeting which approved the admission of Hungary and
7 Manchukuo to the existing pact. On May 6th Ott
8 reports that he has reconciled the conflicting views
9 of ITAGAKI and others in his cabinet and that the
10 treaty may therefore go through. He seems to have
11 wanted the alliance to be directed mainly against
12 Russia (Ex. 501).

13 In the speech to the Diet above mentioned
14 (Ex. 2229-A) he said that those who resisted Japan
15 in China must be exterminated.

16 During this period the 5-year plans, the
17 narcotization of China, the consolidation of pro-
18 Japanese regimes there, the interference with the
19 trade of other countries, and the Chinese aggression
20 generally (see for example Ex. 998 and 272) made
21 steady progress. The hold of the government over
22 means of propaganda was strengthened by the Motion
23 Picture Law (Ex. 155).

24 Other major events of this period were (1)
25 the forcible occupation of Hainan Island in February

1 in spite of protests from the United States, Britain
2 and France (Ex. 613-A). (2) The aggression against
3 the U.S.S.R. and Mongolian Republic in May (Ex. 766).

4 In June occurred the mistreatment of British
5 subjects in Tientsin (Ex. 1003). In fact, the
6 HIRANUMA Cabinet was no less aggressive in every
7 direction than its predecessor.

8 HIRANUMA returned to office as Minister of
9 State in the second KONOYE Cabinet, on 6 December
10 1940, becoming Home Minister on 21 December until the
11 formation of the third KONOYE Cabinet on 17 July
12 1941, when he again became Minister of State until
13 its fall on 17 October. He was not included in the
14 TOJO Cabinet. By joining KONOYE (Whose appointment
15 he had supported, Ex. 532) he adopted the Tri-Partite
16 Pact which he had tried to negotiate himself, and while
17 he held office he was responsible for the whole of the
18 aggressive preparations, acts, and resolutions of
19 that long period. In particular he attended almost
20 all of the many Liaison Conferences in the first
21 six months of 1941 (Ex. 1103), and the Imperial Con-
22 ference of July 2 (Ex. 588, 779 and 1107). Whether
23 he continued to attend Liaison Conferences after
24 July we do not know, because publication was stopped.
25 He did not attend the Imperial Conference of September

1 6th, but as a member of the cabinet was responsible
2 for its momentous decision. We would again point
3 out that the subsequent attempt of some members of
4 the KONOYE Cabinet to recede from this was not a
5 matter of principle but purely of expediency, owing
6 to the doubts of OIKAWA, the then Navy Minister as
7 to the success of war. We do not know HIRANUMA's
8 part, if any, in this discussion. He attended the
9 fateful ex-premiers' meeting of November 29th
10 (Ex. 1196). He made no protest against war. On the
11 contrary he said that public sentiment must be
12 braced up to face it.

13 His next appearance is on 17 July 1944,
14 when a meeting of ex-premiers was held at his house
15 to consider replacing the TOJO Cabinet, not to bring
16 the war to an end, but "to build a powerful national
17 cabinet which will surge forward unswervingly."
18 (Ex. 1277). The next day, TOJO having resigned he
19 attended the official conference to choose his
20 successor (Ex. 1278). He advocated a military man,
21 suggested Admiral SUZUKI, Kantaro, and finally re-
22 commended TERAUCHI, Koiso, HATA, or a naval man.
23

24 When KOISO resigned he again attended the
25 Conference (Ex. 1282) and said they must fight to
 the end. He wanted to recommend the principal

1 ministers as well as the Premier. He strongly
2 opposed any advocacy for peace. He again recommended
3 a military or naval man, finally proposing Admiral
4 SUZUKI, Kantaro, who had expressed his readiness
5 to die fighting for the Emperor.

6 In our submission HIRANUMA was a member of
7 this conspiracy and every phase of it, from start to
8 finish.

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KIDO

The particulars with regard to him are to be found on page 329 of the summary. To paragraph 3, the exhibit numbers of extracts from his diary now have to be added: 1985, 1986, 1987, 2191, 2192 and 2251 to 2280. Exhibit 2250 is a writing by him, and exhibits 266, 1189, which is replaced by 2249, and 1193 particularly refer to him.

These documents are the main source of information about him. In our submission when one reads them (as a whole and not by quoting half-sentences, as in the motion) one is driven to the following conclusions:

1. He was a strong and influential character. From the beginning, when he held the comparatively minor office of Chief Secretary to the Lord Keeper of the Privy Seal he was frequently consulted by people then more important than himself, who took his advice. Every office that he held he made more important than it would have been in the hands of most men. In his later offices he was almost always consulted, not only about policy, but frequently about appointments to Cabinet office.

2. He was a cautious man. He was not so

1 much concerned with the right or wrong of any
2 policy as with the risks accompanying it.

3 3. His particular concern was always to
4 avoid internal quarrels in Japan. He did not so
5 much mind what they agreed upon as long as they
6 agreed. He was in the early days against consti-
7 tutional innovations, but changed this attitude
8 later.

9 4. His attitude to the Emperor was to
10 dissuade him from taking a firm line about any-
11 thing for fear it should bring him into controversy.

12 5. He was a whole-hearted adherent of
13 KONOYE until KONOYE fell, when he transferred
14 his allegiance to TOJO.

15 6. He was or became in favor of Japanese
16 aggression, but also of caution and delay in apply-
17 ing it.

18 In the beginning he was anti-militarist
19 and we do not suggest that he was one of the original
20 conspirators. Even then, however, the above-
21 mentioned attitudes are illustrated by exhibits
22 179-E, of September 10, 1931, 179-I, of September
23 22 and 2251 of January 28, 1932, which show that
24 he was not against the Manchurian aggression on
25 principle, but because the army was getting too

1 powerful, and was against the Emperor doing anything
2 to stop it.

3 We submit that he fully joined the con-
4 spiracy in 1937, when he became Education Minister
5 on 22nd October and Welfare Minister on 11th
6 January 1938 (concurrent until 26th May). By the
7 time he joined, the domination of Manchuria was
8 complete, the cabinet was fully committed to the
9 extension of the China aggression, having decided
10 on 11th July to send more troops and push forward
11 although the original incident was being settled
12 locally. The cabinet was also committed to the
13 five-year plan in Japan and Manchuria. The offices
14 held by KIDO had no direct connection with war
15 policy, but exhibits 2255 to 2261 show that he took
16 a prominent part in it and approved of all the fatal
17 decisions taken. Exhibit 2257 in particular shows that
18 he knew this was an offensive operation and that the
19 talk of self defense was all humbug.

20 It is remarkable that he makes no reference
21 to the horrors of Nanking, although they were in
22 full force from 11 December 1937 to 6 February 1938,
23 when the situation began to improve. The indigna-
24 tion of the world cannot have been unknown to him
25 and the cabinet, but nothing was done to stop them

1 until MATSUI was recalled on 5 March and made an
2 adviser to the cabinet of which KIDO was a member
3 on 20 July. KIDO may not have been responsible for
4 the outbreak of this orgy of atrocities, but he was
5 certainly to blame for its continuance.

6 During his time as Minister of Education
7 there was published in the Tokyo Gazette exhibit
8 266, "The Japanese Spirit." We submit that it is
9 inconceivable that this would have appeared without
10 the full knowledge and approval of the Minister,
11 especially a man of KIDO's character as revealed by
12 his diary. The article preached full support of all
13 that had happened in China down to and including the
14 refusal to deal with Chiang Kai-Shek. Also, the ideal
15 of Greater East Asia under Japanese leadership, and
16 the welding of all Japanese into a unified state.
17 That these were his opinions is shown by the diary
18 extracts quoted.

19 He continued in the HIRANUMA cabinet as
20 Home Minister, thus having an unbroken period of
21 cabinet office from 22 October 1937 to 30 August
22 1939. We submit that he has a general responsibility
23 for all the events of this period, shown on pages
24 55 to 100 of the summary. In particular for the two
25 aggressions against the USSR, in the summers of 1938

1 and 1939. During this period the following exhibits
2 show his activities in support of military alliance
3 with Germany and Italy and his knowledge of Germany's
4 aggressive intentions: 2262, 2268 to -71, 775..

5 We submit that if his activities had stopped
6 here there is ample material on which he should be
7 convicted on the conspiracy and the counts relating
8 to China. These are in fact the guide to understand-
9 ing later events.

10 KIDO was one of the protagonists in the
11 formation of the new one-party political system in
12 Japan on the Fascist model. Exhibits 2263, 2274 to
13 2276. He would have been its Vice-President under
14 KONOYE, had he not decided on 1 June 1940 (exhibit
15 2276) to accept the office of Lord Keeper of the
16 Privy Seal instead. His position in this office was
17 largely made by himself. His views as to the duties
18 of his position are to be found in exhibits 2273
19 and 1066; it amounted to this, that the Lord Keeper
20 was the Emperor's principal adviser, especially on
21 foreign affairs. He developed a new function, that
22 of advising the Emperor on the choice of every new
23 premier, with the assistance of the ex-premiers and
24 the president of the Privy Council. When he was out
25 of office (exhibit 2273) he thought the Lord Keeper

should not interfere in this, but when he became
1 Lord Keeper he dropped this idea and took upon
2 himself the duty of advising the Emperor on this
3 question, attaching such weight as he thought fit to
4 the views of the ex-premiers and managing to bring
5 at least a majority of them to the view he had usually
6 formed in advance. By these means he was responsible
7 for the choice of KONOYE on 17 July 1940 (exhibit 532)
8 and again on 17 July 1941 (exhibit 1117); of TOJO on
9 17 October 1941 (exhibit 2250); of KOISO on 18
10 July 1944 (exhibit 1278); and of Admiral SUZUKI,
11 Kantaro, on 5 April 1945 (exhibit 1282).

12 His attitude towards the United States,
13 Great Britain and the Netherlands appears from ex-
14 hibits 2272, 2277, 619, 1294, 627, 1065, 1095, 1125,
15 1129, 1130, 1146, 1239, 1276. It may be summarized by
16 saying that it was at least from 1940 on, hostile
17 though cautious. It is quite clear that he supported
18 the expansionist policy at the expense of these
19 countries but considered that Japan needed a longer
20 period of preparation before putting it into effect.
21 But when those favouring immediate action prevailed,
22 he fell in with their view.

23 Perhaps the most important of these is
24 exhibit 1130, where he advocates a ten-year post-

1 ponement of the advance to the southern regions,
2 and meanwhile friendly relations with the United
3 States while intensive preparations are pushed on.
4 No doubt if his advice had been taken we should not
5 be holding this trial today; and if he had resigned
6 when it was rejected we might not have included him
7 except with regard to China. He did not, and this
8 document proves him an aggressor at heart. Even in
9 exhibit 1270 of January 1944, when he was consider-
10 ing the possibility and necessity of a compromise
11 peace, though he did nothing about it, he suggested
12 that after peace Japan should build up cooperation
13 with the USSR and China against Britain and America.

14 An important aspect of his case centers
15 round the appointment of TOJO as premier on October
16 17, 1941. It is quite clear from exhibit 2250
17 that he had determined on this before the ex-premiers
18 met to consider it. He knew very well that TOJO
19 had been pressing for immediate war, and was only
20 restrained by the cautious attitude of the navy. It
21 is true that he succeeded in inducing TOJO to abandon
22 the resolution of the Imperial Conference of
23 September 6 for war in mid-October, and to prolong
24 the negotiations, but he made no attempt to induce
25 him to adopt an attitude towards them which would

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offer the slightest hope of their success. The
1 crucial point is that in this dispute between the
2 army and the navy, which was not concerned with the
3 merits of war, but only with its prospects of
4 success, he not only procured TOJO's appointment as
5 premier, but induced the Emperor to give, or gave in
6 the Emperor's name, an instruction to the navy which
7 could only mean that they should appoint a Navy
8 Minister who would do whatever TOJO told them. They
9 appointed SHIMADA--and he did. KIDO was intelligent
10 enough to know that there was not the slightest
11 hope of or justification for the United States adopt-
12 ing any terms to which TOJO would agree, and that the
13 arrangements which he made could not postpone war for
14 more than a few weeks. It is significant that he
15 makes it clear in exhibits 1196 and 2250 that he
16 rejected the appointment suggested by WAKATSUKI and
17 others, of General UGAKI, the only man who might
18 perhaps have averted war altogether. It is also
19 significant that in exhibit 2250, written in November,
20 he abandoned altogether the excuse for appointing
21 TOJO which he had given the Emperor on 2 October
22 (exhibit 1155).

23 On 26 November NOMURA and KURUSU suggested
24 to TOGO (exhibit 2249, replacing exhibit 1189) that
25

1 they should induce President Roosevelt to send a
2 peace telegram to the Emperor, which he later did,
3 and asked him to consult KIDO. On 28 November TOGO
4 rejects the suggestion, saying that he had consulted
5 him.

6 The entry which convicts KIDO of entire
7 complicity in the plot for the surprise attacks of
8 December 8 is exhibit 1239, which shows that at the
9 very time when he was taking part in the farce of
10 delivering the President's long delayed telegram to
11 the Emperor, if it was delivered even then, he knew
12 very well of the plans for the surprise attack.

13 With regard to the B and C offences we
14 submit that the guilt of KIDO is shown not only by
15 his position of adviser to the Emperor on foreign
16 affairs, and by his knowledge of the way in which
17 Japanese forces carried on warfare as shown at
18 Nanking while he was in the cabinet, but by exhibits
19 1185 to -7, which show that he was well aware of
20 what was happening. It is hardly conceivable that
21 TOGO and SHIGEMITSU should not have told him of the
22 complaints coming in through the Swiss Legation, or
23 that he should not have known of Eden's broadcast in
24 January 1944, which was heard by Colonel Wild in the
25 prison camp at Singapore (especially as he admits

1 knowing of Eden's broadcast about the Hong Kong
2 atrocities in 1942). We submit it was his duty to
3 advise the Emperor to insist on having these outrages
4 investigated and put right, and in any case to insist
5 on adequate steps being taken to prevent a recurrence
6 of what had happened earlier in China.

7 From start to finish it does not appear
8 that he ever drew the attention of the Emperor,
9 whose adviser he was, to the moral aspect either of
10 the initiation of the Pacific War or of the manner
11 in which it was conducted. His whole mind was on
12 expediency.

13 We submit that from at least October 1937 he
14 was a member of this conspiracy and responsible for
15 all that was done in pursuance of it.

16 I am told that in quoting the exhibit which
17 shows KIDO's knowledge of the atrocities I read 1185
18 to -7. Should be 1985 to -7.
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HIROTA

1 The particulars with regard to him are to be
2 found on page 323 of the summary and the additional
3 exhibits which directly affect him are 2208-A, B, C,
4 2226-8, 2260.

5 While ambassador to the U.S.S.R. in 1931, he
6 advocated a firm policy towards the Soviet Union and
7 readiness for immediate war, not to preserve Japan
8 from communism but to get possession of Eastern Siberia
9 (exhibits 692-3). On 31 December 1931 Litvinov
10 offered Japan a non-aggression pact (through HIROTA
11 and YOSHIZAWA) but it was not accepted (exhibit 744).

12 He was continually in office, first as Foreign
13 Minister in the SAITO and OKADA cabinets, and then as
14 Premier, from 14 September 1933 to 2 February 1937, from
15 9 March 1936 as Premier.

16 During that period and especially during his
17 premiership, although his utterances to other powers
18 were often conciliatory enough, his actual policy and
19 the events for which we submit he is responsible were
20 of a different character.

21 Pu-Yi was appointed Emperor of Manchukuo
22 (exhibits 234, 437-A), and the control of Japan over
23 that territory consolidated, especially in the direction
24 of economic monopoly. (For Example, see exhibits 965,

1 939, 941, 850, 445, 948.) The Manchurian Affairs
2 Board was established (exhibit 451).

3 The policy of controlling and developing
4 Japanese and Manchurian industry for war was initiated
5 and carried on.

6 The so-called "independence movements" in
7 various parts of North China and Mongolia were insti-
8 gated and encouraged by Japan. HIROTA actively
9 supported this (exhibit 215). The object was both
10 anti-Chinese and anti-Soviet. The stimulation of the
11 sale of narcotics in China proceeded rapidly.

12 Japan denounced the Washington Naval Treaty,
13 and put forward at the London Naval Conference the
14 proposal for a common upper limit in place of the
15 5-5-3 ratio, which of course meant that unless Britain
16 and America neglected their responsibilities in other
17 parts of the world, Japan would dominate the Pacific.
18 When this was rejected, Japan withdrew from the con-
19 ference and HIROTA assumed responsibility in
20 exhibit 2226, in which he attempted to cover up the
21 position with fair words, in spite of which Japan
22 steadily and secretly increased her naval armaments.

23 After HIROTA succeeded OKADA as Premier,
24 following the 26 February rebellion, the power of the
25 military was increased, especially by restoring the

1 rule that War and Navy Ministers must be on active
2 service (exhibit 93).

3 In the summer of 1936 a most important
4 series of ministerial conferences were held (exhibits
5 978, 977, 216, 704, 217, 979), at which national
6 policies were laid down covering the whole gist of the
7 conspiracy we allege. HIROTA was personally present
8 at three of them, and, of course, responsible for all.
9 They envisaged an aggressive policy in China, East
10 Asia, and the South Seas, and steps to be taken
11 against U.S.S.R., Britain and U.S.A. This was to be
12 achieved by joint efforts of diplomatic skill and
13 "national defense" -- thus showing plainly that in
14 HIROTA's mind "national defense" did not stop at
15 defending Japan or resisting attack, but meant
16 aggression. This was the first time that these policies
17 were formally adopted by a government, and show
18 HIROTA as their official godfather, if not their ori-
19 ginator. Some of them were secret. In the autumn
20 the Anti-Comintern Pact was negotiated and signed on
21 25 November with secret protocol (exhibit 36). Its
22 real objects may be better gathered from exhibits 482,
23 479, 484, and 485, Privy Council Meeting attended by
24 HIROTA, than from its text. It was accompanied by
25 border raids on Soviet territory (exhibits 753, 751).

1 The cabinet fell on 2 February 1937 as the
2 result of simultaneous attacks from the Seiyukai
3 Party for being too militaristic and bureaucratic
4 (exhibit 2208-A) and from the army (exhibits 2208-B
5 and C), because of those attacks and because it still
6 contained some representatives of political parties.
7 The army made prompt use of the new powers HIROTA had
8 given them to prevent the formation of a UGAKI cabinet.

9 On 4 June 1937 HIROTA was back as Foreign
10 Minister in first KONOYE cabinet and President of the
11 first Planning Board, and on 11 July was responsible
12 for the decision to take advantage of the Marco Polo
13 Bridge Incident by launching an invasion of China.
14 He was also responsible for the "Five-Year Plan"
15 (exhibits 841, 842 and especially 2227 and 239), which
16 elaborated the industrial measures begun in his former
17 period of office.

18 The whole course of the Chinese aggression of
19 1937-8 I have already dealt with in the case of KIDO
20 and will not refer to here. HIROTA was directly
21 responsible from the beginning until he left office
22 on 29 May 1938. As Foreign Minister he was parti-
23 cularly to blame for the rejection of all outside
24 efforts to mediate the conflict (e.g., exhibits 949,
25 950), and protests (e.g., exhibits 988, 955, 957 and

1 innumerable others from then on), and of the interven-
2 tions of the League (exhibits 958, 962, etc.) and of
3 the Brussels Conference (exhibits 954-A to B). The
4 only attempt at mediation which he tolerated was
5 German and that was killed by the intransigent
6 attitude of the cabinet on 16 January 1938 (exhibits
7 486-C, 978-A, 266, 268, 2260). The German Foreign
8 Office had no doubt that the oft-repeated experience
9 of HIROTA, or other Japanese Foreign Ministers, saying
10 one thing and the army doing another was a trick
11 (exhibit 486-E). They should know.

12 After this Japan proceeded to set up a
13 series of puppet regimes in the parts of China
14 progressively occupied, and to establish a commercial
15 system by which in China, Japan came first, Germany
16 second, and the rest might have the leavings, if any.
17 (Exhibit 2268 shows HIROTA's personal responsibility
18 for this.)

19 We have a speech by him about China in the
20 Diet on 22 January 1938 (exhibit 972-G).

21 On 18 June 1937 (exhibit 946), and again on
22 12 February 1938 (exhibit 58, record pages 9230 and 9236)
23 he was taking a hand in Japanese naval plans. On the
24 latter occasion he refused a request by the United
25 States, Britain and France to disclose or give an

undertaking about her building program.

1 HIROTA tried to dispel American apprehensions
2 about Japanese intentions in the South Seas after the
3 occupation of Hainan and Spratley Islands, although
4 this was really the policy he had himself laid down
5 as Premier in August 1936.
6

7 From 13 March to 3 August 1940 HIROTA was
8 a cabinet councillor: at this time Japanese moves
9 with regard to French Indo-China and the Netherlands
10 East Indies were initiated.
11

12 After August 1940, HIROTA's only activities
13 at present known to us are his appearances at the
14 vital ex-premiers' conferences. On 22 July 1940
15 (exhibit 532) and 17 July 1941 (exhibit 1117), he
16 advocated a military premier and cabinet, though KONOYE
17 was, in fact, appointed with army support. On
18 17 October 1941 (exhibit 2250) he gave firm support
19 to TOJO. On 29 November 1941, when called upon to
20 advise the Emperor as to the Pacific War, he agreed
21 that war was inevitable, but suggested a postponement
22 and possible diplomatic solution after its outbreak.
23 On 17 and 18 July 1944 (exhibit 1278) he said the
24 prosecution of the war was first and foremost and
25 suggested a member of the Imperial family as Premier
but agreed to TERAUCHI, KOISO or HATA. On 5 April 1945

1 (exhibit 1282) he was still emphatically in favor of
2 fighting through to win the war, and thought it could
3 be done. He advocated the War or Navy Minister as
4 Premier.

5 In our submission he was an aggressor from
6 start to finish, and the contrast between his public
7 and private words and acts shows that he was a par-
8 ticularly clever one.

9 ITAGAKI

10 The particulars with regard to him are on
11 page 325 of the summary. Additional documents having
12 special reference to him are exhibits 1973-6, 1998,
13 2177-A, 2178-A and B, 2231, 2191 to 2201, 2214, 2262,
14 2263, 2266 and 2271. He is shown to have been one of
15 the original planners of the Mukden Incident (evidence
16 of TANAKA, record pages 1960 and 15,853; exhibits
17 2191, 2193-6) and related plots (exhibit 2177-A,
18 page 22 of that exhibit), as a member of the Kwantung
19 Army Staff, on which he remained until 1 March 1937;
20 rising from colonel to major general and chief of
21 staff on 23 March 1936.

22 He took part in the appointment of DOHIHARA
23 as major of Mukden (exhibit 2194), and in the detachment
24 of Manchukuo from China (exhibits 303, 2191, 2195,
25 2196).

1 He was a founder of Kye-wa-Kai, a society
2 to create the Manchukuo state to help Japan in her
3 fight against Anglo-Saxon and Comintern aggression
4 (exhibit 731-A).

5 At the time of the Marco Polo Incident he was
6 a lieutenant general on the General Staff, and became
7 War Minister under KONOYE on 3 June 1938, remaining
8 in that office until the fall of the HIRANUMA cabinet
9 on 30 August 1939. I have dealt several times with
10 the events of these periods, for which we submit he
11 was responsible, and will not repeat.

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K 1 Personal activities of this at the time are
a 2 shown in exhibits 856, 857, 271, 589, 612, 491, 504,
p 3 and 761, all of which are included in the Summary,
l 4 and 2197, 2198, 2199, 2201 and 2214, which are not.
e 5 They prove what could properly be assumed without
r 6 them, his active participation in the aggressive
g 7 moves and preparations of his period of office.

d 8 From 7 July 1941 to 7 April 1945 he was
b 9 commander of the Korean Army, and as such responsible
e 10 for the illegal sending of prisoners of war to Korea
r 11 for exhibition purposes (exhibits 1173-5), for
g 12 enforcement of illegal regulations with regard to
l 13 them in that area (exhibit 1976), and for illegal
d 14 sentences upon them (exhibit 1998).
b 15

b 16 From 7 April 1945 until the surrender he
e 17 was in command of the 7th Army in Malaya. While he
r 18 held this command at the end of the war serious
g 19 outrages against prisoners of war occurred. It
l 20 covered Malaya, Java, Sumatra and Borneo (exhibit
d 21 2282). As an example, out of 827 prisoners of war
b 22 at Sandakan camp, Borneo, on 29 May 1945 only five
e 23 survived, the rest having been murdered or died of
r 24 ill treatment or starvation.

g 25 Some other exhibits covering prisoners of
l war offences in the area at this time are: 1513 A

1 (Record page 12,914), 1514 A, 1516 A, 1517 A (ITAGAKI's
2 visit to camp), 1518 A, and Colonel Wild's evidence
3 (Record page 5491).

4 We submit that there is ample evidence
5 against him at all periods.

6 KOISO

7 The particulars with regard to him are on
8 page 329 of the Summary and the additional documents
9 directly referring to him are exhibits 2202A, 2210-14.

10 KOISO was one of the original leaders of
11 the Manchurian plot and the related internal plots
12 (exhibits 179F, pages 18 and 20 of exhibit 2177A,
13 2178A).

14 May I interpose there that I should also
15 have adverted to those exhibits in the case of
16 DOHIHARA since they implicate him equally in those
17 plots.

18 He was a major-general, director of the
19 important Military Affairs Bureau (exhibit 2177A,
20 not "war service bureau" as stated in the particulars)
21 from 21 August 1930 to 29 February 1932, and as
22 such responsible for the Military budget, without
23 which no reinforcement could have been sent to
24 Manchuria (TANAKA, Record page 1⁵, 859). He then
25 became Vice War Minister until 8 August, then Chief

1 of Staff, Kwantung Army until 5 March 1934. He was
2 decorated in connection with the Manchurian affair.

3 Before the incident occurred he attended
4 with MINAMI a meeting with the directors of the
5 South Manchuria railway to discuss problems in
6 Manchuria and Mongolia (exhibit 2202A). He handled
7 very substantial sums from Manchurian incident
8 Secret Service Funds from time to time (exhibits
9 2210-3).

10 On 4 June 1932 he received a secret cable
11 from the Chief of Staff, Kwantung Army about the
12 taking over of customs in Manchuria to acquire
13 revenue (exhibit 227).

14 On 3 November 1932 he was corresponding with
15 his successor as Vice War Minister about an outline
16 for guiding Manchukuo (exhibit 230).

17 On 5 December 1935 to 15 July 1938 he
18 commanded the Korean Army.

19 From 7 April - 30 August 1939 he was Overseas
20 Minister in the HIRANUMA Cabinet, and again from
21 16 January to 22 July 1940 in the YONAI Cabinet.

22 On 8 May 1939 he was discussing with ITAGAKI
23 the Military Alliance with Germany and Italy (exhibit
24 2214).

The particulars with regard to General
1 MINAMI are to be found on page 331 of the Summary,
2 and the additional exhibits which directly affect
3 him are: Exhibits No. 186, 3202-A, 2203-A, 2204-A,
4 2205-A, 2206-A, 2207, 1973, 1974, 1975 and 2251.
5

While General MINAMI was Minister of War
6 (14 April 1931 to 13 December 1931) there are several
7 occasions which indicate his participation in the
8 aggression against China, not only in the "Incident"
9 of 18 September 1931, but in the further aggression
10 in taking over North China in 1935-1936. Previous
11 to the Manchurian Incident of 18 September 1931
12 is noted the conference of 30 June 1931 for the dis-
13 cussions of the Manchurian-Mongolian problems (Ex-
14 hibit 2202-A). Shortly following this, on the 4th
15 of August 1931, occurred his speech to the Army
16 Commanders and the Commanding Generals of Divisions,
17 which indicated his attitude toward Manchuria
18 (Exhibit 186) (Page 1, Exhibit 2207).

Then followed the Manchurian Incident of
18 September 1931. His attitude concerning that
Incident is shown by Exhibit 2204-A.

He approved General HONJO's aggressive action in Manchuria (Exhibit 2207, page 2).

25 His attitude toward the extension of the

His attitude toward the spiritual

Incident into occupation of all Manchuria is shown

by the Privy Council meeting of 9 December 1931
(Exhibit 2205-A). Marquis KIDO's Diary shows that on
28 January 1932 General MINAMI delivered a lecture
before the Emperor on the situation in Manchuria,
which shows his aggressive plans toward Manchuria
(Exhibit 2251, Record pages 16213 - 16214).

While Commander in Chief of the Kwantung
Army and concurrently Ambassador to Manchukuo - 10
December 1934 to 6 March 1936 - he conspired to
further aggression against China, which resulted in
the acquiring of the four provinces of North China.
This is indicated by the excerpts from the records
of the Japanese Foreign Ministry (Exhibit 2206-A),
and he admitted that his troops went beyond the
"Great Wall" (Page 3 of Exhibit 2207). He further
admitted that "his advice" to the Government of
Manchukuo was, in substance, "a direction" (same
reference).

He was a member and President of the
Greater Japan Political Association, one of the
principal aims of which was the extension of the
Greater East Asia Co-Prosperity Sphere, which
included India, Burma, the Dutch East Indies and
the Philippines, and he believed in Asia for the

1 Asiatics (page 2 of Exhibit 2207).

2 While Governor-General of Korea he
3 approved the sending of Prisoners of War to Korea for
4 illegal purposes, as is shown by the correspondence
5 between General ITAGAKI and the War Ministry (Ex-
6 hibits 1973, 1974 and 1975).

7 It is believed that General MINAMI was one
8 of those at the bottom of the conspiracy for ag-
9 gression against China, and that he was an impor-
10 tant figure in future plans for aggression.

11 On 24 June 1940 he and MUTO were discussing
12 with the German Ambassador such matters as military
13 aggression in Indo-China, mutual support of Germany
14 and Japan against America, and a Japan-Russia non-
15 aggression pact to free Japan economically from
16 America (Exhibit 523), and advocating these courses.

17 From 29 May 1942 to 22 July 1944 he was
18 governor-general of Korea, and from then to 7 April
19 1945 he was Premier.

20 During the latter period he made a speech
21 which is Exhibit 277.

22 As Premier he bears a very heavy respon-
23 sibility with regard to outrages against prisoners
24 of war and others.

25

1 By the time he took office the whole matter
2 had become notorious. Eden's first broadcast had
3 taken place two years before and his second six months
4 before.

5 As Premier he obtained the right to attend
6 Imperial General Headquarters (Exhibit 1282).

7 The following are a few of the Exhibits
8 having particular reference to offences against
9 prisoners of war during his term of office: 2012-4,
10 2016A, 2022, 2025A, 2110-2, record page 15, 221,
11 2092, record page 15, 154, 15148-50.

12 If he didn't know of all these things, we
13 say it was his duty to enquire into them and prevent
14 them.

15 We submit that we have made out an ample
16 case against him on all Counts.

17 THE PRESIDENT: I think we might recess
18 now. We will recess for fifteen minutes.

19 (Whereupon, at 1445 hours a recess
20 was taken until 1500 hours, after which the
21 proceedings were resumed as follows:)

Whalen & Morse

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Comyns Carr.

4 MR. COMYNS CARR: Your Honor, in regard to
5 MINAMI, the last one I dealt with, I am told there is
6 some doubt as to whether the statement on page 331 of
7 the summary that he was a Cabinet Councillor is
8 correct. He was appointed by the Cabinet to be a
9 councillor but it may be it was some other council than
10 the Cabinet.

11 MUTO. The particular with respect to MUTO,
12 Akira, are to be found in the Summary, Appendix B,
13 page 332. Additional documents in relation to him are
14 exhibits 2239 to 2247.

15 It is readily apparent that the answers of
16 MUTO in his interrogation (exhibit 2239) and other
17 documentary and oral evidence support each count of
18 the Indictment in its allegations against MUTO. The
19 evidence, likewise, substantiates the accuracy of the
20 statement of MUTO's individual responsibility as set
21 out in the Indictment, Appendix E, page iv.

22 The accused MUTO is shown by the evidence to
23 have participated in Japan's over-all aggression in at
24 least two capacities or lines of activity: (1) As
25 an Army officer in the field. (2) As an Army officer

1 in the War Ministry at Tokyo.

2 The evidence is sufficient to show that the
3 accused has a responsibility for the Manchuria, and
4 still more the China Affairs. He is shown to have
5 been one of the so-called younger Army officers, a
6 Major on the Army General Staff (record 2006) at the
7 time of the incident of 18 September 1931. He was a
8 Colonel and Staff Officer of the Kwantung Army in
9 1936 to 1937 (record 16,118). He was Adjutant of the
10 General Staff, NorthChina Army, in 1938 to '39 (record
11 16,118). His services against China are indicated by
12 the evidence (exhibit No. 1272) that he was decorated
13 in 1934 for his services in the 1931 to 1934 "war" and
14 in 1940 for his services in the China "Affair."

15 The Military Affairs Bureau is shown to have
16 been headed by the accused as Director or Chief from
17 October 1939 to April 1942 (record 16,118) throughout
18 the period of preparation and initiation of the
19 aggressive attacks by Japanese armed forces against
20 the United States, Great Britain, Netherlands East
21 Indies and French Indo-China. The accused first served
22 in this Bureau, as a Section Chief in 1935 to '36
23 (record 16,118). On 12 October 1939 MUTO was appointed
24 (Summary, pages 103-298; exhibits 102 and 118) Chief
25 of the Bureau, Secretary of the National General

1 Mobilization Council and a member of other bodies,
2 including Planning Board, Manchurian Affairs Board
3 and Cabinet Information Board. The accused in these
4 official positions is shown to have exercised directing
5 or possibly controlling influence over domestic and
6 international policies and politics, over propaganda
7 and press control (record 15,870-1), and over military
8 and naval action. For instance, in June 1940 he was
9 with KOISO in a discussion with the German Ambassador
10 of various aggressive schemes (exhibit 523).

11 The accused participated regularly in liaison
12 conferences and conferences before the Throne in 1941.
13 On 13 January 1941 he attended a liaison conference
14 with TOJO and OKA. MUTO attended a liaison conference,
15 with TOJO and others, on 30 January 1941 (record 11,057),
16 on 3, 13 and 20 February (record 11,057), on 2, 6-7
17 and 11 March, on 10 April, on 3, 8, 12, 15, 22 and 29
18 May, and on 6, 16-17, 23, 25, 26, 27 and 28 June (page
19 332, Appendix B of the Summary). At the conference
20 on 25 June it was decided to make aggressive advances
21 to the south, first by diplomacy if possible, then if
22 necessary by arms (record 11,753). MUTO attended the
23 Privy Council Meeting on 28 July 1941 (record 7,069),
24 and Imperial Conferences on 6 September (record 8,814),
25 5 November (record 10,333), and 1 December (record

1 10,519). MUTO attended also the Inquiry Committee
2 meeting of the Privy Council at 7:30 a.m. on 8 December,
3 at which the belated declaration of war against the
4 United States and England was discussed.

5 The last evidence of TANAKA about him is so
6 fresh in the mind of the Tribunal that I will not
7 quote it.

8 MUTO was recommended to Ribbentrop for the
9 decoration of the Great Cross by Germany because of
10 his contribution to German-Japanese cooperation
11 (record 11,352, exhibit 1272).

12 I quote from the Military Attache's words --
13 the German Military Attache's words: "Without regard
14 to the vacillations of Japanese policy, he always
15 advocated the conclusion of a German-Japanese alliance
16 in a most important position," and from the Ambassador's
17 comments: "MUTO, as head of the political section of
18 the War Ministry has often been mentioned in my reports.
19 In view of the political influence wielded by the
20 Japanese army, his attitude was and is of great
21 importance."

22 According to TANAKA's evidence which is
23 corroborated by the witness SUZUKI and the numerous
24 documents passing between the Foreign Ministry and the
25 War Ministry about prisoners of war it is clear that

1 his bureau had a great responsibility with regard to
2 them, although in his case for a rather short time.
3 As one of those entitled to attend Imperial General
4 Headquarters he must, we submit, have been aware of
5 the entries in the War Diary about the outrages at
6 Singapore in February and March 1942 (exhibit 476),
7 before he proceeded on 20 April to command the 2nd
8 Imperial Guards Division in Sumatra which was in the
9 same army area, of which the Commander in Chief was
10 General YAMASHITA. He was there until October 1944
11 during which period there is much evidence of
12 atrocities in the command, and then joined the same
13 General in the Philippines as Chief of Staff until
14 the surrender. It is during this period that some
15 of the worst atrocities were committed there.

16 The evidence now in the record is such that
17 the motion to dismiss the Indictment with respect to
18 the accused MUTO should, it is submitted, be over-
19 ruled.

20 KIMURA. The particulars with regard to him
21 are on page 328 of the Summary.

22 He was decorated for his services in both
23 the Manchuria and China "incidents", but apart from
24 the fact (exhibit 2282) that the 32nd Division which
25 he commanded was serving in China, and that he was

1 Chief of Staff of the Kwantung Army, October 1939 to
2 October 1940, and member of a number of Japanese
3 Manchurian joint committees, we have no knowledge of
4 what he did.

5 On 10 April 1941 he became Vice War Minister.
6 You have heard evidence to the effect that there were
7 limitations upon the importance of this office. Never-
8 theless it placed him in a position not only to know
9 but to take an active part in, and to assume responsi-
10 bility for the events of his period of office. It may
11 be judged best from exhibit 1272, which shows the
12 reasons why he was recommended for the German decoration
13 of the Great Cross in May 1942. The German Military
14 Attache says: "He was in Germany 1922-4. In his
15 position of Chief of Staff of the Kwantung Army October
16 1939 to October 1940 (which is omitted from his
17 personnel record, but is mentioned in exhibit 102
18 though without a date) he has especially worked on
19 behalf of Germany. Vice Minister of War since 10
20 April 1941, he is one of the principal advocates of
21 German-Japanese military cooperation." The Ambassador
22 adds his own comment: "KIMURA has closely cooperated
23 with Minister of War and Prime Minister TOJO already
24 on the Kwantung Army. His personal relationship to
25 TOJO as well as his (i.e. TOJO's), primary

1 preoccupation in his position of Prime Minister have
2 enhanced his (i.e. KIMURA's) influence in the leader-
3 ship of the War Ministry, as well as his position in
4 regard to the other Vice-Ministers to a marked degree."
5 We submit that these remarks are obvious common sense,
6 and that having regard to the predominant position of
7 the army at this period even the Vice-Minister has a
8 greater share of responsibility than the Minister of
9 some other departments. At all events that he has
10 enough. During his period of office he was also a
11 Councillor of numerous other official bodies, includ-
12 ing the Planning Board and the Total War Research
13 Institute. The activities of the latter at this time
14 are shown in exhibits 870A and 871 from August to
15 October 1941, which shows clearly that the lack of
16 clarity in Japan's communications to the United States
17 was intentional, because the object of them was not
18 peace but delay while war preparations were completed.
19 Exhibits 686A, 688A and 1336 also come from this body,
20 and the two latter sketch the "Co-Prosperity Sphere,"
21 and plans to annex the Soviet Maritime Provinces. When
22 we come to the questions of prisoners of war offenses
23 we have much more direct evidence of KIMURA's activites.
24 It was he who communicated to the Foreign Minister of
25 January 23, 1942, the undertaking which was transmitted

1 to the Allied Governments to observe the Geneva
2 Convention mutatis mutandis and to give due consider-
3 ation in regard to food and clothing to the racial
4 habits and customs of interned prisoners (exhibit 1958).
5 Yet he retained his office until March 1943 while this
6 undertaking was daily and flagrantly disregarded. He
7 had access to all the information and attended
8 Imperial General Headquarters and the meetings of
9 bureau chiefs where these matters were discussed and
10 decided. He must share responsibility for the decision
11 of April or May 1942 to make prisoners of war work
12 regardless of rank and to send them for exhibition
13 to places in Japan, Korea (record 14,288), for TOJO's
14 speeches about "no work no food" (exhibits 1960 and
15 1962), for the failure to answer and the untruthful
16 answers sent to allied protests which he had to
17 approve (record page 14,287). As a member of Imperial
18 General Headquarters he must we submit have had access
19 to the War Diary and seen the account of outrages past
20 and intended in Malaya quoted in exhibit 476.

21 Above all he must have been a party to the
22 illegal decision to use prisoner of war labor on the
23 rushed construction of the Burma-Siam railway, with
24 its inevitable tragic consequences.

25 He also shares the responsibility for

1 exhibits 1964 to 1976. He personally issued the
2 order for the death penalty on captured airmen,
3 exhibit 1992. He was responsible for the prisoner
4 of war punishment law, exhibit 1998. He personally
5 ordered the illegal employment of 1500 prisoners of
6 war on munition work in Manchuria in August 1942
7 (exhibit 1970).

8 From 30 August 1944 to the surrender he was
9 commander of the army in Burma. The outrages which
10 took place there during that period are described
11 in exhibits 1573A, 1574A, 1552A, 1553A, 1555A, 1558A.
12 For these we submit he is directly responsible, and
13 that the motion by him should be dismissed.
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1 OKAWA. Particulars are on page 334 of the
2 Summary. Additional documents are Exhibits 2177-A-2184,
3 2231.

4 The main case against him is that he was one
5 of the originators of the pernicious ideas which gave
6 birth to the conspiracy and took a lead by speech and
7 writing in popularizing them.

8 Exhibits 2179-A and 2180-A show that as early
9 as 1925 and 1926 he was preaching a war between East
10 and West, denouncing the League of Nations and the
11 Anglo-Saxon races, and calling upon Japan to arouse
12 Asia against them.

13 Later in Exhibit 2181-A, published in 1939,
14 he explains that the foundation of Manchukuo was
15 merely the beginning of the Greater East Asia plan,
16 and roused a great nationalistic spirit in Japan, and
17 welcomes the victories following the Marco Polo Inci-
18 dent. In spite of the assistance of England, France
19 and the USSR to China, Japan must use irresistible
20 force over a long period to establish the New Order.

21 In Exhibits 2182-A, published in 1943, he
22 lauds the ideas of a former writer who foresaw Japan
23 "ruling over the foundation of the world," advocating
24 that she should absorb China first, then Siam and
25 India, the whole area of the South Seas, the Philippines,

1 opposing Britain, and obtaining the control of the
2 Islands in the Indian Ocean and French Indo-China.
3 He refers to a number of former writers who had preached
4 similar ideas. He then describes at length and with
5 enthusiasm the development of the Manchurian and
6 Chinese aggressions, and traces it as the precursor
7 of the Pacific War, maintaining that the most important
8 thing for Japan is to complete the subjugation of
9 China.

10 In Exhibit 2183-A he approves of the same
11 writer's view that the maritime provinces of Siberia
12 must be occupied against Russia and the South Sea
13 Islands against England.

14 In the evidence which he gave at his trial in
15 September 1934 for his part in the various plots of
16 1931 to '32 he boldly justifies his actions and gives
17 a description of the parts played by himself, the
18 accused HASHIMOTO, ITAGAKI, DOHIHARA, KOISO and others
19 in those plots and in the Manchurian affair with which
20 he says they were linked, and of the propaganda he
21 had carried on at public meetings as well as by writing
22 in their support. He also explains in detail the ideas,
23 similar to those above-mentioned, which they were advo-
24 cating (Exhibits 2177-A, 2178-A). He also put in a
25 document (Exhibit 2178-B) describing his work as Li-

1 Director of the East Asia Research Institute of the
2 South Manchuria Railway, a post he appears to have
3 occupied throughout the period of the Indictment, ex-
4 cept when in prison as a result of this trial, carrying
5 on an elaborate propaganda to stir up the Japanese
6 people to take action in Manchuria, in cooperation
7 with the chiefs of the Kwantung Army.
8 He was thus both a thinker, a propagandist and
9 an active plotter.

10 We submit that he was one of those responsible
11 for this conspiracy and all its results.

12 THE PRESIDENT: Before you leave OKAWA's case,
13 Mr. Carr, we note the action taken by the Nuernberg
14 Tribunal in respect of the accused before them, Gustave
15 Krupp von Bohlen und Hallbach. We may have to take
16 similar action in respect of OKAWA. That is a matter
17 for consideration later.

18 MR. COMYNS CARR: OSHIMA. The particulars
19 with regard to OSHIMA, Hiroshi are to be found on page
20 335 of the Chronological Summary, and the additional
21 exhibits which directly affect him are: Exhibit No.
22 2106 (Record page 15186); 2230 (Record page 15990);
23 2232 (Record page 16003).

24 From 1st August 1931 to 5 March 1934 he was
25 a member of the Army and Navy General Staffs and was

1 Director of the East Asia Research Institute of the
2 South Manchuria Railway, a post he appears to have
3 occupied throughout the period of the Indictment, ex-
4 cept when in prison as a result of this trial, carrying
5 on an elaborate propaganda to stir up the Japanese
6 people to take action in Manchuria, in cooperation
7 with the chiefs of the Kwantung Army.

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9 an active plotter.

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13 Mr. Carr, we note the action taken by the Nuernberg
14 Tribunal in respect of the accused before them, Gustave
15 Krupp und Von Bohlen and Hess. We may have to take
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18 MR. COMYNS CARR: OSHIMA. The particulars
19 with regard to OSHIMA, Hiroshi are to be found on page
20 335 of the Chronological Summary, and the additional
21 exhibits which directly affect him are: Exhibit No.
22 2106 (Record page 15186); 2230 (Record page 15990);
23 2232 (Record page 16003).

25 From 1st August 1931 to 5 March 1934 he was
a member of the Army and Navy General Staffs and was

1 decorated for his services in the "Incident."

2 The requirement that Japan secure the politi-
3 cal strength and bargaining power which a military
4 alliance with Germany would afford, and the reasons
5 therefor, have been fully discussed. The first step
6 in the accomplishment of this desired end was taken
7 in the Spring of 1935 by the accused OSHIMA who was
8 then Japanese Military Attache to Germany. The original
9 negotiations were not initiated through diplomatic
10 channels but were conducted by the Military Attache.
11 It was not until the Spring of 1936 that the negotia-
12 tions were conducted through regular diplomatic chan-
13 nels. The accused OSHIMA assisted in these negotia-
14 tions. (Exhibit No. 477, Record page 5913). This
15 resulted in the conclusion of the Japanese-German
16 Anti-Comintern Pact on 25 September 1936, the purpose
17 and importance of which have been explained. He was
18 again decorated for this.

19 Close collaboration was maintained between
20 the Japanese and Germans under the provisions of the
21 protocol of the Anti-Comintern Pact which took the
22 form of espionage and subversive activities against
23 the Soviet Union. It was shown in a report of
24 Reichsfuehrer, H. Himmler, on 31 January 1939, that
25 the accused OSHIMA had succeeded in sending ten Russians

1 with bombs across the Caucasian frontier in an unsuc-
2 cessful attempt to kill Generalissimo Stalin, and that
3 OSHIMA had purchased a tract of real estate in Fal-
4 kensee in the name of a middle man, where Russians
5 were employed in writing propaganda pamphlets which
6 were conveyed from Poland into Russia by means of
7 small balloons. (Exhibit No. 489, Record page 6026).

8 Germany at first opposed military aggression
9 by Japan in China under the guise of fighting commu-
10 nism in third states, but upon Japan giving evidence
11 in January 1938 of a determination to wage a major
12 war with China, Germany reoriented her policy and
13 Japan thus gained the support of Germany in her
14 plans against China as well as against Russia.

15 At this time, 4 February 1938, Chancellor
16 Hitler assumed supreme command of the armed forces in
17 Germany. In line with the expressed desire to strengthen
18 the Anti-Comintern Pact, Ribbentrop and OSHIMA, still
19 Military Attaché to Germany, discussed the advisability
20 of closer collaboration between Germany and Japan
21 which resulted in a proposal for a mutual aid treaty
22 aimed at the entire world. (Exhibit No. 497, Record
23 page 6051). OSHIMA, elevated to the rank of Ambassa-
24 dor Plenipotentiary to Germany on 8 October 1938, con-
25 ducted the negotiations for a Japanese-German military

1 alliance. Italy temporarily refused to unite in such
2 an alliance. OSHIMA, after obtaining the approval of
3 the Foreign Office of the Japanese Government, went
4 to Italy in December 1938 for the purpose of inducing
5 Mussolini to unite in such an alliance. (Exhibit No.
6 487, Record page 6061).

7 As a result of the division within the Japanese
8 Cabinet as to the extent to which Japan should commit
9 herself in the proposed alliance, OSHIMA was advised
10 in December 1938 that the ITO Commission would be sent
11 to Europe to make known the Government's exact posi-
12 tion. (Exhibit No. 487, Record page 6062).

13 OSHIMA and SHIRATORI conferred on matters
14 pertaining to the proposed alliance and, contrary to
15 the views of the Japanese Cabinet, they advocated an
16 all-out military alliance aimed at the world. They
17 endeavored to impose their convictions upon the
18 Japanese Government and exercised the utmost pressure
19 in their endeavor to influence and direct Japanese
20 policy in this regard.

21 The ITO Commission on its arrival in Berlin
22 instructed OSHIMA that he must work within the views
23 of the Government (Exhibit No. 487, Record pages 6072
24 to 79), but OSHIMA, desiring a military treaty without
25 reservations on the part of Japan, refused to follow

1 the advice of the ITO Commission and refused to commun-
2 cate through official channels a Japanese compromise
3 proposal. Acting with SHIKATORI, then Ambassador to
4 Rome, OSHIMA threatened to bring about a fall of the
5 Japanese Cabinet by resigning from his post unless
6 the Government reconsidered its stand. (Exhibit No.
7 499, Record page 6096).

8 In April 1939 the Japanese Government recon-
9 sidered its stand and presented a new draft of the pro-
10 posed treaty in connection with which it requested
11 an agreement that in the publication of the Pact an
12 explanation be made which would tend to soften the
13 attitude which would likely result on the part of
14 England, France and America. The reason assigned by
15 the Tokyo Cabinet for the necessity for such a limited
16 interpretation of the Pact was that both for political
17 and economic reasons Japan "was at the moment not yet
18 in a position to come forward openly as the opposer of
19 the three democracies."

20 OSHIMA, for the second time transcending the
21 role of a ministerial officer, refused to officially
22 communicate the Japanese Government's proposal to the
23 nation to which he was accredited. (Exhibit No. 502,
24 Record page 6100). By this action he endeavored to
25 impress upon the Japanese nation the policy which he

1 impress upon the Japanese nation the policy which he
2 and the accused advocated and which was necessary to
3 assure Japan the political and military support for
4 their aggressive action in East Asia.

5 Ribbentrop informed Ambassador OSHIMA that a
6 German-Italian pact would be signed during the month
7 of May, and that it was desirable that the Japanese
8 Government reach its final decision quickly, so that
9 it would be possible to formulate secretly the Tri-
10 Partite Pact simultaneously with the signing of the
11 German-Italian Pact (Exhibit No. 486, Record page 6115).
12 Such a pact was concluded on 22 May 1939 (Record page
13 6120). In the last days before its conclusion the
14 Japanese Cabinet made strenuous efforts to come to a
15 final decision. In a strictly confidential and unof-
16 ficial conversation, Ambassador OSHIMA advised von Rib-
17 bentrop that he had received a telegram from Foreign
18 Minister ARITA, according to which the Japanese
19 Government wished to reserve entrance into a state of
20 war in case of a European conflict. For the third
21 time OSHIMA endeavored to influence the policy of his
22 government in line with his view and that of his asso-
23 ciates by refusing to pass this matter on to the German
24 Government. He advised ARITA of this by telegram,
25 whereupon War Minister ITAGAKI intervened and requested

1 OSHIMA to hold up further action with regard to
2 Foreign Minister AKITA in order not to disturb the
3 discussions among the various factions in Tokyo,
4 promising that the Army was "firmly resolved to fight
5 the matter out quickly and even at the risk of a
6 Cabinet overthrow." (Exhibit No. 2230, Record page
7 15990).

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As early as April 1939 Ribbentrop advised Ambassador OSHIMA that if negotiations for the Tri-Partite Alliance were delayed too long it might become necessary for Germany to consider a non-aggression pact with Russia. (Exhibit 487, Record, page 6080). Such a pact was concluded between Germany and the Soviet Union on 23 August 1939 (Record, page 6122). Ambassador OSHIMA was directed to file a protest to Germany's action in concluding the pact, but in order to preserve his own policy and that of most of the accused with regard to Japanese-German relations and collaboration for which he had so energetically worked, he disobeyed his government's instructions for the fourth time by postponing delivery of the Japanese memorandum of protest until 18 September 1939, when the matter was handled in a surreptitious and unofficial manner. (Exhibit No. 506, Record, page 6124).

The expediency of quickly concluding a German-Russian non-aggression pact on 23 August 1939 became apparent upon the dramatic German invasion of Poland on 1 September 1939. Notwithstanding the temporary set-back to the conclusion of a Japanese-German-Italian alliance, OSHIMA continued in his efforts to develop closer German-Japanese relations. In September 1939 he agreed with Ribbentrop that Japan's fate was

linked with Germany's fate and that if Germany could succeed in mediating for a settlement between Japan and Russia, the result would be that Japan would be free to extend her power in East Asia toward the South in which direction her vital interests lie. Ribbentrop considered it would be of great importance for the policy of collaboration that General OSHIMA remain as Ambassador to Germany, in which capacity he had enjoyed the complete confidence of Hitler and the German Army. (Exhibit No. 507, Record, page 6127).

When General OSHIMA resigned as Ambassador, Ribbentrop advised the German Ambassador to Japan that General OSHIMA on his return would work further for German-Japanese friendship and requested that OSHIMA be allowed to transmit in code telegrams to the Reich Foreign Minister personally and to forward letters addressed to the Reich Foreign Minister unopened. (Exhibit No. 508, Record, page 6131).

OSHIMA, timing his action with the initiation of war by Hitler against Poland, advised the Japanese Government to proceed with military aggression in the Southern areas of Greater East Asia and against Hong Kong, for which the Japanese Navy, in his opinion, was prepared. (Exhibit No. 509, Record, page 6136).

1 After OSHIMA's return to Japan, the German
2 Ambassador reported on 23 February 1940 that OSHIMA
3 and others remained "in an unchanged friendly attitude
4 and ready for every support." (Exhibit No. 511,
5 Record, page 6141).

6 The downfall of the YONAI Cabinet and its
7 replacement by a stronger pro-alliance and pro-German
8 Cabinet has been discussed elsewhere. The new Cabinet
9 concluded the Tri-Partite Pact of 27 September 1940,
10 the final milestone in the carrying out of that part
11 of the conspiracy directed toward German and Italian
12 assistance in the accomplishment of Japan's so-called
13 divine mission. Upon the conclusion of the Pact,
14 Foreign Minister MATSUOKA offered OSHIMA the appoint-
15 ment of Ambassador to Germany. General OSHIMA at
16 first declined reappointment to this position on the
17 ground that it would interfere with the continuance
18 of his politically active work in Japan for the Tri-
19 Partite Pact. However, upon the exertion of pressure
20 by the Foreign Minister and upon insistence by the
21 Army, supported also by important Navy circles, General
22 OSHIMA accepted reappointment. (Exhibit No. 560,
23 Record, page 6422).

24 Foreign Minister MATSUOKA, at a farewell
25 party for OSHIMA on 15 January 1941, stated that, "The

1 efforts exerted by our country for establishing the
2 New Order in East Asia which began with the Manchurian
3 Incident, and the efforts exerted by Germany and Italy
4 to break down the Versailles system both have a funda-
5 mental common cause which, in turn, will contribute
6 to the establishment of the New Order of the World."
7 With German-Japanese relations destined to become
8 closer, he said that OSHIMA's ability would be relied
9 upon in an extensive way. (Exhibit No. 473-C, Record,
10 page 6423).

11 OSHIMA, in a conference with the State
12 Secretary of German Foreign Ministry on 22 February
13 1941, stated with regard to British possessions in
14 East Asia that Singapore must be seized in grand
15 style from the sea and from the land, although he
16 considered it necessary to take Hong Kong first.
17 (Exhibit No. 570, Record, page 6457). On the following
18 day, in a conference with Ribbentrop, OSHIMA asserted
19 that preparations for the occupation of Singapore would
20 be completed by the end of May; that prudence required
21 preparations for war against both England and America;
22 that the moment for the occupation of Singapore must be
23 coordinated with operations in Europe and that the
24 occupation of Hong Kong and the Philippines had been
25 provided for in case of need. (Exhibit No. 571, Record,

1 page 6459). OSHIMA promised Ribbentrop that he would
2 procure maps of Singapore in order that Hitler, con-
3 sidered as the greatest expert on military questions
4 at that time, could advise Japan on the best method of
5 attack against Singapore. (Exhibit No. 580, Record,
6 page 6529).

7 OSHIMA was a member of the General Commission
8 established under the provisions of the Tri-Partite
9 Pact. (Exhibit No. 121, Record page 768).

10 On 22 June 1941 Germany invaded Russia.
11 Hitler had informed OSHIMA of his intention as early
12 as 6 June (Exhibit No. 1084). Shortly thereafter,
13 OSHIMA agreed with Ribbentrop that he would influence
14 the Japanese Government in the direction of speedy
15 military action against the Soviet Union. (Exhibit
16 No. 587, Record, page 6562).

17 Between the first and third of December 1941
18 Ambassador OSHIMA began the definite negotiations for
19 a "no separate peace pact" between Japan, Germany
20 and Italy, which was concluded on 11 December 1941.
21 The question had been raised by the General Staff as
22 early as 18 November and an assurance given by Ribben-
23 trop on 21 November (Exhibit No. 601).

24 On 14 December 1941, Chancellor Hitler gave
25 a reception in honor of Ambassador OSHIMA at which

1 OSHIMA was awarded the Grand Cross of the Order of
2 Merit of the German Eagle in Gold. At this reception
3 Hitler acknowledged OSHIMA's services in the achieve-
4 ment of German-Japanese cooperation which had culminated
5 in a close brotherhood in arms. In the discussion
6 that followed, Ambassador OSHIMA explained the progress
7 of the war in the Pacific and stated that after the
8 capture of Singapore Japan must turn toward India and
9 that it was important for Germany to synchronize its
10 attack against India from the west as Japan attacked
11 from the east. (Exhibit No. 609, Record, page 6670).

12 In March 1943, OSHIMA attended a conference
13 with Ribbentrop in which Ribbentrop suggested that
14 Japan institute similar warfare as Germany had been
15 doing and in which Ribbentrop discussed with OSHIMA
16 the German U-boat order of September 1942 in regard to
17 failing to rescue survivors of torpedoed merchant
18 vessels. OSHIMA conveyed to the Japanese submarine
19 authorities information regarding the German operating
20 policy, namely, complete destruction of personnel as
21 well as the ship. (Exhibit No. 2106, Record, pages
22 15,187, 15,189). While OSHIMA is particularly concerned
23 with the conspiracy alleged in Count 5 of the Indictment,
24 we submit that the evidence shows that he was linked
25 with the more general conspiracy from the beginning,

1 or at least from an early date, and responsibility
2 for all the acts alleged in the counts in which he
3 is charged.

4 SHIGEMITSU

5 The particulars with regard to SHIGEMITSU,
6 Mamoru, are to be found on page 337 of the chrono-
7 logical summary, and the additional exhibits which
8 directly affect him are: Exhibits Nos. 123, 2279,
9 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025-A,
10 2026, 983, 1017 (Record, page 9683), 1018 (Record,
11 page 9688), 1023, (Record, page 9712), 2016-A, 1275
12 (Record, page 11,364), 773-A (Record, page 8061), 973
13 (Record, page 7876), 829-A (Record, page 8007), 662
14 (Record, page 7169), 664 (Record, page 7183), 1274.

15 This able diplomat, after service in the
16 Foreign Ministry and China, was appointed in 1935
17 as Councillor of the Board of Manchurian Affairs,
18 having previously been decorated for his services in
19 China, 1931-1934; in 1936 was appointed Ambassador to
20 the USSR; in September, 1938 was appointed Ambassador
21 to Great Britain; in 1941 (February) he became Ambassador
22 to the Republic of China, and finally, on the 20th of
23 April 1943, Minister of Foreign Affairs, which position
24 he held until 7 April 1945 (Exhibit 123).
25

While still Ambassador to the USSR (2 January

1 1938) he was rewarded for services in concluding
2 the Anti-Comintern Pact (Exhibit 983).

3 In May 1940, while Ambassador to Great Britain,
4 he cabled ARITA (Foreign Minister) to apply National
5 Policy to the South Seas Areas (This after the German
6 conquest of Belgium and Holland) (Exhibit 1017). On
7 5 August 1940 he cabled MATSUOKA (Foreign Minister)
8 to dispose of France and the Netherlands in East Asia
9 first to profit Japan most (Exhibit 1023).

10 In September 1941 he talked with KIDO about
11 United States negotiations (Exhibit 2279).

12 While Foreign Minister he consistently denied
13 requests of protecting powers to visit POW camps, which
14 was in violation of treaties and assurances (Exhibits
15 Nos. 2016-A, 2017, 2018, 2019).

16 He refused to permit the protecting power
17 to ask certain questions of POW in the few visits
18 permitted to POW camps (Exhibits Nos. 2020, 2021).

19 He was at Privy Council meeting which
20 supported the annexation by Thailand of Shan States from
21 Burma (violation of treaties) (Exhibit No. 1275) and
22 heard without protest TOJO's cynical remarks about
23 international law, a matter peculiarly within his
24 province.

25 In September 1943 he made a speech glorifying

1 the Tri-Partite Pact (Exhibit No. 773-A); and in
2 December, 1943, he made another speech accusing the
3 United States and England of being forces of aggres-
4 sion (Exhibit No. 973).

5 He was notified by the Swiss (protecting
6 power) of the ill-treatment of POW continuously --
7 1943-1945 (Exhibit No. 2022).

8 He was notified particularly of mistreatment
9 of POW in Thailand and denied same, although report of
10 bad conditions had been made to the Japanese Government
11 (Exhibits Nos. 473, 2023, 1989).

12 He received protests through the Swiss of
13 the mistreatment of United States interned civilians,
14 but made false reports concerning their treatment
15 (Exhibit No. 2024).

16 He received protests through the Swiss as
17 to the use of United States POW for labor in connection
18 with operations of war, but made false answers thereto
19 (1943-1945) (Exhibit No. 2025-A).

20 He received protests through the Swiss and
21 International Red Cross as to the lack of food for
22 POW and refused to make a change (Exhibit No. 2026).

23 On 21 January 1945 he made a speech in the
24 Diet saying, ". . . sacred mission to keep fighting
25 for common war aims of international justice in war of

1 self-existence and self-defense" (Exhibit No. 829-A).

2 On 3 March 1945 he received a telegram from
3 Saigon about the camp in French Indo-China (Exhibit
4 No. 662) and made no objection to Japan taking over
5 control there 10 March 1945, although in violation of
6 treaties and assurances (Exhibits Nos. 662, 664).

7 While the aggressions against China were
8 going on in Manchuria, he was Councillor of the
9 Embassy and Consul-General in China -- 1930-1934;
10 then after the aggression in Manchuria was a "fait
11 accompli" he became Councillor to the Board of
12 Manchurian Affairs -- 1935-1936, and thereafter was
13 decorated for services in the China "Affair."

14 (Page 337 of the summary -- of the narrative summary).

15 During the crucial period, 1936-1938, when
16 it was essential to keep the USSR quiet while further
17 territory of China was seized, he was there as Ambassa-
18 dor. Then 1938-1941 he was Ambassador to Great Britain
19 wiring back to Japan advocating further aggression in
20 Southeast Asia against the weak powers. He was part
21 and parcel of the conspiracy to wage a war of aggres-
22 sion from 1931 on.

23 He became a member of the government as
24 Foreign Minister 20 April 1943 and continued as such
25 until 7 April 1945. To protests about the mistreatment

of POW and violation of treaties and assurances he
1 turned a deaf ear. He delayed responses to, he
2 denied, he treated with contempt, and he lied about
3 the protests from the United States and Britain,
4 submitted through Switzerland, the protecting power.
5 He cannot now be permitted to hide behind such a
6 defense as that submitted in his motion that the
7 Army "misinformed him." He was responsible for per-
8 mitting to continue the violations of treaties and
9 assurances and the customs and laws of war. As
10 Foreign Minister it was his duty to see that Japan
11 abided by her treaties and assurances. He failed in
12 his duty, either through wilful ignorance or design;
13 the evidence points to the latter.

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1 'I am told there are two mistakes that I have
2 made in the reading of that, your Honor.

In the first place, when SHIGEMITSU was appointed Ambassador in China, it was not to the Republic of China, it was to the China puppet government. That was in 1941, February 1941.

7 The other is when I said he was decorated
8 for services in China I gave a reference to the narrative
9 summary. It should be to the chronological summary
10 which you had this morning and on which you will see
11 the exhibit number concerned.

SHIMADA

13 The particulars with regard to him are on page
14 338 of the summary. The only additional document
15 specially relating to him is exhibit 2248.

The defendant SHIMADA joined the Navy in the year 1901 when 18 years of age, and remained in that service as an active officer until January 1945. It is probably unnecessary to refer to his career prior to the year 1929 excepting to point out that his promotion up to that time had been fairly rapid and that for a period during the first World War he served as a Naval Attaché in Italy. In 1929 he was promoted to the rank of Rear Admiral and from that year onwards he held increasingly important appointments and received

1 numerous honors and awards. He was at various times
2 associated with the Naval General Staff and was Vice-
3 Chief in 1935. Among the appointments held by him
4 were those of membership of the Investigation Council
5 of National Resources and of the Naval Preparedness
6 Board of Supreme Headquarters. He received awards in
7 1934 for his services in connection with the 1931-
8 34 war, in 1938 for his services in connection with the
9 Anti-Comintern Pact, and in 1940 for his services in
10 the China War. It is suggested that the award to a
11 naval officer for his services in connection with the
12 Anti-Comintern Pact has special significance. He was
13 promoted to the rank of Admiral in November 1940.

14 The defendant held no political office until
15 he became Naval Minister and Vice-President of the
16 China Affairs Board in the TOJO Cabinet formed in
17 October 1941. He continued to hold the appointment
18 of Naval Minister until July 1944 and from February
19 to August 1944 he was chief of the Naval General Staff.
20 In August 1944 he was appointed to the Supreme War
21 Council.

22 It will be recalled that the Imperial Conference
23 of 6th September 1941 had decided on war if by early
24 October the negotiations with the United States were
25 not successfully concluded (Transcript page 10,252),

1 and early in October the Supreme Command Group stated
2 that they would not wait beyond the 15th October
3 (Ibid). When the time came the then Naval Minister
4 OIKAWA while refusing a definite opinion was prepared
5 to leave the decision to KONOYE who wished the negotiations
6 to continue, and would not support TOJO who contended
7 that there was no hope of a diplomatic success and that
8 war was inevitable. (Transcript pages 10,246 and
9 10272). The KONOYE Cabinet accordingly resigned on the
10 16th October (Transcript page 10,285) and on the 18th
11 October TOJO formed a new cabinet in which SHIMADA
12 became Navy Minister in the place of OIKAWA.

13 When KIDO had procured the appointment of
14 TOJO he also delivered to him and OIKAWA messages in
15 the name of the Emperor ordering that agreement should
16 be reached between the Army and Navy (Exhibit 2250).
17 As the new premier was the Army Minister the only
18 possible conclusion was that a new Navy Minister must
19 be chosen who would agree with TOJO. SHIMADA was chosen.

20 It is submitted that the evidence shows that
21 in addition to SHIMADA carrying out his duties as Navy
22 Minister and a member of the cabinet, he attended the
23 numerous Liaison Conferences which were held after
24 TOJO became Premier, and also the Imperial Conferences
25 held on 5th November and 1st December. As regards

1 the Liaison Conferences exhibit 1103 shows that in
2 respect of the period to the end of June 1941 the
3 Navy Minister was present at every conference excepting
4 one and on this occasion the Vice-Minister attended.
5 It must be inferred that the Navy Minister continued
6 to attend the conferences held from October onwards.
7 Exhibit 1163, Transcript page 10,316, strongly supports
8 this. This document is a telegram sent by TOGO to
9 NOMURA on 2nd November and states that "since the
10 formation of the new cabinet, the government has been
11 holding conferences for a number of days with the
12 Imperial Headquarters". The irresistible conclusion
13 is that as an important member of the government the
14 Navy Minister was present.

15 As regards the Imperial Conferences, the
16 attendance of the defendant is established by Exhibit
17 1107.

18 It will be recalled that these conferences
19 were concerned with the negotiations with the U.S.
20 and the policy to be adopted towards the U.S., Great
21 Britain and the Netherlands. They show throughout that
22 it was intended to go to war with these countries,
23 the final decision being made at the Imperial Conference
24 on 1st December when it was decided to open hostilities
(Transcript page 10,519).

1 Plans and preparations for war against these
2 countries had been formulated and executed for several
3 years. In particular, plans had been adopted in June
4 1937 which had as their object the achieving by the
5 year 1941 not only the maximum production of equipment
6 and supplies necessary for waging the wars but also the
7 maximum potential for future maximum production. To
8 carry out these plans, steps were taken to bring about
9 national self-sufficiency at a cost which normal
10 legitimate enterprise would not justify. In order
11 that Japan could wage war it became in substance a
12 totalitarian state and abandoned normal economic standards
13 substituting an economy which was based solely on her
14 schemes for expansion and domination. The evidence of
15 Mr. Liebert and the documents produced by him show in
16 detail the nature of these production, economic and
17 financial plans, the extent to which they were realized
18 and the controls that were exercised and the other
19 methods employed to give effect to them.
20

21 But there was not only economic planning and
22 preparation for war. In addition there were military
23 and naval preparations which were directed towards the
24 same end, namely the wars intended to be waged against
25 any country which opposed Japan's schemes for domination
and expansion.

1 For example the evidence established that
2 in violation of treaty obligations, Japan's mandated
3 islands were secretly fortified over a period of several
4 years prior to December 1941, and it is submitted that
5 these fortifications were an essential part of the
6 plans and preparations for aggressive war. It is also
7 submitted that the Tribunal should draw the inference
8 that the defendant was well aware of the fortifications
9 and of their object.

10 It is submitted that the defendant joined the
11 TOJO Cabinet because he was, and was known to be, an
12 active supporter of the TOJO policy and that his par-
13 ticipation in the conspiracy prior to October 1941,
14 must be inferred from his joining the cabinet at that
15 juncture. It is also submitted that the award made
16 to him in 1938 for his services in connection with the
17 Anti-Comintern Pact is further proof of his participa-
18 tion in the conspiracy at that time.

19 However, whatever part SHIMADA took in these
20 matters before he joined the TOJO Cabinet and even if
21 it be assumed that he took none, by his joining that
22 Cabinet and by his subsequent actions he adopted all
23 that had been done, and lent his assistance to the
24 furtherance of the aggressive plans.

25 SHIMADA has admitted that he knew that YAMAMOTO

1 had prepared his plan for the attack early in 1941
2 and that the plan was adopted in May or June. (Trans-
3 cript page 10,194). He also admitted that he knew that
4 early in 1941 the Navy commenced the development of
5 a shallow water torpedo because the water at Pearl
6 Harbor was shallow and that the fleet practised the use
7 of this torpedo during the summer of 1941 (Ibid).

8 On the 5th November 1941 NAGANO (Chief of the Naval
9 General Staff) issued the first order for the putting
10 into execution of the YAMAMOTO plan (Transcript page
11 10,347). Soon after that date an order was issued
12 that X-day, the day of the opening of hostilities,
13 should be 8th December (Exhibit 809, page 11). SHIMADA
14 knew that the task force for the attack moved on the
15 27th November (Transcript page 10,422).
16

17 The evidence shows that in addition to
18 SHIMADA taking part in the Cabinet meetings and confer-
19 ences, he performed various acts and had various
20 matters referred to him as Navy Minister which had
21 direct reference to the war preparations. For example,
22 in November 1941 he authorized expenditure from the
23 special "War Expenditure Account" (Transcript, page
24 8542), and his approval was sought at the end of
25 October 1941 for the issue of military currency notes
for use in the countries intended to be attacked

(Transcript, page 8446).

Special significance must be given to
2 KIDO's statement that the Emperor on 30 November
3 1941 on his advice consulted SHIMADA and the Chief
4 of Naval General Staff with regard to a suggestion
5 that the Navy wished to avoid war, and that they
6 having answered the Emperor's question with consider-
7 able confidence, the Emperor had instructed KIDO to
8 tell the Premier to proceed as planned (Transcript,
9 page 10,468 and page 12,480).

11 The defendant was a signatory to the
12 Imperial Rescript declaring war (Transcript, page
13 10,686) and as Navy Minister he reported to the
14 inquiry committee meeting of the Privy Council
15 concerning the declaration of war which was held at
16 7:30 o'clock on the morning of 8th December 1941
17 (Transcript, page 10,690).

This support of the policy of aggression
and expansion is clearly shown in the speech made by
him at a Diet committee meeting on 10 February 1942
when he strongly advocated expansion and Japan's
leadership in Greater East Asia and the elimination
of any element not conforming to the Japanese will
(Transcript, page 16,183, Exhibit 2248).

That he was a politician as well as a naval

1 officer is shown by Exhibit 1273, where KIDO records
2 that it was he who in September 1942 persuaded TOGO
3 to resign rather than break up the cabinet over his
4 dissatisfaction with the formation of the new Greater
5 East Asia Ministry.

1 It is also to be observed that SHIMADA was
2 a member of the Imperial Rule Association Political
3 Society and that when in June 1944 the reorganization
4 of the Cabinet was under consideration, including a
5 change of Navy Minister, TOJO according to KIDO's
6 diary (Exhibit 1277, Transcript, page 11,376) sug-
7 gested the advisability of SHIMADA being appointed
8 Welfare Minister in order to have a member of that
9 society in the Cabinet.

10 The general reasons why we submit he must
11 be held responsible for war atrocities have already
12 been given, and in addition the following comments
13 should be made. The evidence shows that copies of
14 the complaints lodged by the Swiss Legation were
15 sent by the Foreign Ministry to the Navy Ministry
16 (Evidence of SUZUKI, Tadakatsu, Transcript, page 15,506
17 and following pages, and Exhibits 2170, 2173, 2174).
18 It is also submitted that the Navy Minister must be
19 held responsible for the top secret naval order for
20 submarine operations (Exhibit 2105, Transcript, page
21 15,184) requiring the complete destruction of the
22 crews of the ships sunk by submarines, particularly
23 as OSHIMA has stated that this was the German policy
24 and that after discussions with Ribbentrop the German
25 policy was communicated to the Japanese Naval Attache

1 at Berlin (Exhibit 2106, Transcript, pages 15,186,
2 15,195).

3 THE PRESIDENT: We will adjourn until half-
4 past nine tomorrow morning.

5 (Whereupon, at 1600, an adjournment
6 was taken until Friday, 31 January 1947, at
7 0930).
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